

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.12.2021
PRONOUNCED ON : 12.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRP(PD).No.1852 of 2020
and
CMP.No.11109 of 2020

- 1.S.Saravana Muthu
- 2.D.Radhakrishnan
- 3.S.Selva Vinayagam
- 4.R.Tamilselvi Radhakrishnan
- 5.S.Sengottaiselvan

...Revision Petitioners/
Defendants

Vs.

- 1.Thiruthani Arulmighu Murugan Educational Trust,
having its office at No.19/15,
Duraishamy Road
(Backside Tamil Nadu Hardware)
Vadapalani, Chennai 600 026
Represented by V.Murthy
Founder President
Chairman & Managing Trustee
S/o.V.Natarajan, Aged about 62 years,
No.11/6 Pappathiammal Street,
II Floor, Kodambakkam
Chennai 600 024.

- 2.V.Murthy
- 3.V.Indirani
- 4.A.Babu
- 5.A.Jagmohan Rao
- 6.D.Kamalakar
- 7.S.Srinivasan

... Respondents/Plaintiffs

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order passed by the learned III Assistant Judge, City Civil Court, Chennai, in I.A.No.1 of 2020 in O.S.No. 12958 of 2010, dated 18.06.2020.

For Petitioners : Mr.Ravichandran
for Mr.M.Balasubramanian
For R1 : Vacated
For R2 to R6 : Mr.A.Erudayam
For R7 : expired vide in EB

ORDER

(The case has been heard through video conference)

This Civil Revision Petition has been filed against the order passed by the learned III Assistant Judge, City Civil Court, Chennai, in I.A.No.1 of 2020 in O.S.No. 12958 of 2010, dated 18.06.2020.

सत्यमेव जयते

2.For the sake of convenience, the parties are referred to as per the rank in the main suit in O.S.No.12958 of 2010.

3(a).The defendants in the suit are the revision petitioners herein. The plaintiffs/respondents herein have filed the above said suit in O.S.No.12958 of 2020, for declaration to declare the

Thiruthani Arulmigu Murugan Educational Trust as the only valid Board of Trustees and for permanent injunction to restrain the revision petitioners/defendants from interfering with the management, administration and affairs of the trust and Thiruthani Polytechnic College under the head of the Trust.

3(b).Thereafter, the plaintiffs/respondents herein have also filed two amendments petitions and the same were allowed. Consequently, an additional written statement was also filed.

3(c).After framing of issues, trial has been commenced on 19.02.2020 and the plaintiffs side arguments were completed on 20.01.2020 and the defendants side arguments were completed on 06.03.2020 and the matter was posted to 09.03.2020 for reply of the plaintiffs side argument. Subsequently, after adjournment an application in I.A.No.1 of 2020 has been filed seeking amendment of the prayer in the plaint. The said application was allowed by an order dated 18.06.2020 and hence, CRP by the defendants.

4.Heard the learned counsel for the petitioners, learned counsel for the respondents and perused the materials placed on

record.

5.The case of the defendants/revision petitioners herein is that they have filed a suit in O.S.No.12958 of 2020 for declaration and for permanent injunction restraining the defendants from interfering with the management, administration of the trust and Tirutani Polytechnic College, working under the trust. Initially, two amendment petitions were allowed and first round of litigation is over and thereafter, additional written statement has also been filed, consequent thereto additional issues were framed, trial and arguments were completed on 06.03.2020 and the present application has been filed on 11.03.2020.

6.The main contention of the learned counsel for the revision petitioners/defendants is that when there is no explanation to show as to why this amendment is filed after 10 years that to after conclusion of the evidence and hence, the present application for amendment of plaint is not maintainable and he relied upon the following judgments:

1) CDJ 2008 SC 2090 - [Vidyabai & Others Versus Padmalatha & Anothers]

2) 2012 (2) CTC 94 - [J.Samuel & Others, Versus Gattu Mahesh & Others]

3) CDJ 2020 SC 128 – (Supreme Court) Civil Appeal No. 189 of 2020, Pandit Malhari Mahale Versus Monika Pandit Mahale & Others

4) Unreported Judgment (Telangana High Court) CRP No. 2551, 2608, 2896 and 2915 of 2019 - B.Srikar Reddy Vs.B.Venkatamma

7.Per contra, the learned counsel for the plaintiffs/respondents herein would contend that due to inadvertent, the prayer portion was not properly framed and the existing prayer does not give proper meaning which the plaintiffs had intended for. In view of the second prayer after allowing of earlier amendment, additional Court fee has to be paid, consequently necessitates the amendment in the prayer column in respect of details of valuation of the suit and payment of the additional fee thereto and in respect of another amendment regarding functioning college under the said trust in Thiruthani he relied upon the decisions of this Court in

1)CRP(PD).No.1837 of 2014 and M.P.No.1 of 2014 – [S.Nasin Begum Vs. Shanmugam and others]

**2)CRP(MD)PD.Nos.662 of 2014 and 663 of 2014 and
M.P.(MD).No.1 of 2014 – [Utchimahali and others Vs.
P.Murugan and others]**

**3)CRP(NPD).Nos.3781 & 3782 of 2013 – [Devaraj Vs.
Murugesan]**

**4)Civil Appeal No.6921 of 2009 (Arising out of
SLP(C).No.1552 of 2007) – [Revajeetu Builders and
Developers Vs. Narayanaswamy and Sons and Others].**

8.After hearing the rival submissions and perusing the impugned order passed by the Trial Court and the citation referred thereto, it is seen from the records that the proposed amendment in the schedule for the plaint post amendment are:

Para 41(a): Declare that the 2nd to 7th plaintiffs constituting the Board of Trustees under the first plaintiff Thiruthani Arulmigu Murugan Educational Trust” executed and registered under Registration No. 810 of 1997 on 15.09.1997 and granted Registration U/s 12AA of Income Tax Act, 1961 under letter No. DIT (E) No.2 (1072) 06-07, dated 17.09.2007 and rectified under "Cancellation Deed cum Rectification Deed" dated 05.02.2010 as the only valid Board of Trustees in consequence, direction to

administer the said Trust.

Para 41(b): Permanent injunction restraining the defendants from interfering in the Management, administration and affairs of the Trust and of "Thiruthani Polytechnic College" functioning under the said Trust, in Thiruthani in terms of handling admission of students, administration including appointments, accounts in any manner whatsoever.

Para 36 (a): "The plaintiffs state in addition to Court Fee of Rs.375.50 having already been paid on 01.11.2010 for the Suit for Declaration and Injunction, an additional amount of Rs.150/- under Section 25(d) of the Tamil Nadu Court fee and suits valuation Act, 1955, for the value of Rs.5,000/- (Rupees Five Thousand only) being paid now consequent to Declaration prayer under para 41 (aa) by way of amendment in the year 2014."

9.The Trial Court, after discussion has allowed the prayer Nos.1 & 3 and disallowed the Prayer No.2. As against the disallowed proposed amendment No.2, the plaintiffs had not filed any CRP and this CRP has been filed by the defendants, only challenging the order passed in the said I.A.No.1 of 2020, in respect of allowing the amendment in prayer Nos.1 & 3 alone.

10.The main provision under Order 6 Rule 17 of C.P.C would of course state that the Court at any stage of the proceedings may entertain an application seeking amendment of the pleadings if the Court finds that those amendments are very much necessary for the purpose of determining the real issues in controversy between the parties. There is a proviso found under Order 6 Rule 17 C.P.C as per the substitution made by Act 22 of 2002 with effect from 01.07.2002. the said proviso would read that such an application seeking amendment shall not be entertained after the trial has commenced. There is also a rider thereunder that if the Court comes to the conclusion that the party inspite of due diligence could not come out with such a petition seeking amendment prior to the commencement of trial, such an application for amendment can be entertained by the Court.?

11.On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment.

(1)Whether the amendment sought is imperative for proper and effective adjudication of the case?

(2)Whether the application for amendment is *bona fide* or *mala fide*?

(3)The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money:

(4)Refusing amendment would in fact lead to injustice or lead to multi - ple litigation;

(5)Whether the proposed amendment constitutionally or findamentally changes the nature and character of the case? and

(6)As a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

These are some of the important factors which may be kept in mind while dealing with application filed under Order VI Rule 17. These are only illustrative and not exhaustive.

12(a).In the case of **Chakreshwari Construction Private Limited Vs. Manohar Lal**, the Hon'ble Supreme Court has observed that when teh amendment proposed is *bona fide*, relevant and necessary for deciding the rights of the parties involved in the lis, it can be allowed. It has furhter observed that unless the proposed amendment changes the nature of the case originally set

up by the parties and if it does not introduce any fresh cause of action, it can be allowed.

12(b).Further, the judgment of the Hon'ble Supreme Court in ***Mohinder Kumar Mehra Vs.Roop Rani Mehra and ors., reported in 2018 SAR (Civil) 220***, wherein it has been held that even in a case where the amendment application was filed after the evidence, the Court can permit amendment if justice would be served by allowing application.

12(c).The judgment of Hon'ble Supreme Court earlier in the case of ***MahilaRamkali Devi and Ors Vs. Nandram (Dead) through Legal representatives & Ors., reported in (2015) 13 SCC 132*** was relied upon by the Hon'ble Supreme Court. In that case it is held that a prayer cannot be refused for amendment of plaint, merely because there is some mistake, negligence, inadvertence or even infraction of rules of procedure if the amendment of pleadings is required. When the Court is satisfied that the party applying was acting without mala fide and unless it causes injury to his opponent, which cannot be compensated, it can entertain the application for amendment.

13.As seen from Order VI Rule 17 of Civil Procedure Code, its proviso enables the Court to entertain an application for amendment, even after trial subject to the satisfaction of the Court.

14.As held by the Hon'ble Supreme Court in the judgment reported in **(2007) 13 SCC 421** referred to supra, when the missing details in the schedule were due to inadvertence and no prejudice will be caused, if the plaint is amended, incorporating the missing details through amendment application is permissible.

15.As seen from proviso to Order VI Rule 17 of Civil Procedure Code, the Court has got powers to entertain amendment applications even after trial provided sufficient reasons are given. The identity of the property is not altered by allowing the amendment applications.

16.From the citations relied upon by the respective counsels, it is to be stated that two things, one is pre-trial amendment, is generally permissible and other is that if there is sufficient pleadings and proof to show that the parties seeking amendment had exercised due diligence and in spite of it, could not file the

amendment application before the commencement of trial, then if the reason is acceptable, post trial amendment, can be permitted.

17.It is no doubt true that “under Order 6 Rule 17 of the Code of Civil Procedure, wide powers and unfettered discretion have been conferred on the court to allow amendment of the pleadings to a party, in such a manner and on such term, as it appears to the court just and proper. Even if, such an application for amendment of the plaint was filed belatedly, such belated amendment cannot be refused if it is found that for deciding the real controversy between the parties, it can be allowed on payment of costs.

18.Proposed amendment No.1:

The original prayer in the suit in O.S.No.12958 of 2010 is to declare that Thiruthani Arulmigu Murugan Educational Trust” executed and registered under Registration No. 810 of 1997 on 15.09.1997 and granted Registration under Section 12AA of Income Tax Act, 1961, under letter No. DIT(E) No.2 (1072) 06-07 dated 17.09.2007 and rectified under “Cancellation Deed cum Rectification Deed” dated 05.02.2010 as the only valid Board of Trustees now. By way of amendment as extracted supra, they wanted to clarify the prayer.

On a reading of the prayer as it is, I found that the prayer was not properly worded or in other words, it is innocuous.

19(a).In the above cited decision, it has been held by the Hon'ble Apex Court that when there is a factual pleading, if a mistake or certain words found to be omitted either it is a typographical error or otherwise the same can be amended.

19(b).After going through the pleading in entirety in the plaint and also the original prayer, the Trial Court has recorded a finding that *"the plaintiffs now wanted to amend this relief and they wanted to be declared that they are the board of trustees of the first plaintiff's trust, by virtue of the same trust deed and cancellation deed and they had added the consequential relief to administer the said trust which is only the consequential relief. Naturally, they would be entitled to administer the properties of the trust consequently."*

19(c).Therefore, these words to be added as consequential relief. Therefore, insofar as the first amendment is concerned this Court holds that it is only a bonafide mistake which can be

rectified."

20.After reading the pleadings and also the original prayer and the proposed prayer, this Court finds that such an amendment is necessary for determining the lis between the party. Besides it is only in a clear terms clearing the doubt with regard to the prayer that has sought for and in the event of a Court being satisfied with the evidence to grant such a prayer and hence, I find that it is only a *bona fide* mistake crept inadvertently and hence, the first amendment now sought for is just an answer in determination of the lis and also for either grant or rejection of the prayer. Accordingly, I did not find any error or illegality or irregularity in the order passed by the Trial Court in respect of Amendment No.1 in this view of the matter, finding rendered by the Trial Court is hereby confirmed.

21.As stated supra, the Trial Court has rejected the second amendment and hence, the same is not taken up in consideration since, the same was not challenged by the plaintiffs.

22.In respect of the third amendment as extracted supra, it is

for relief to payment of Additional Court Fee. In view of the fact that an earlier application for amendment was allowed and declarative relief has been sought for with regard to certain meetings held in the year 1997 to 1999, which has been allowed and incorporated, however, in respect of valuation and Court fee for consequential amendment was not taken. Hence, the Trial Court has rightly come to the conclusion in holding that *"in order to avoid such instance, after the pronouncement of judgment this Court is of the view it is better to permit the third amendment at this juncture and to make necessary amendment in the valuation claims and also to receive the Court fees for the said prayer"*.

23.Hence, I find that the order passed by the Trial Court in allowing the amendments viz., proposed amendment Nos.1 & 3 alone, does not suffer from any illegality or irregularity warranting interference in the revisional jurisdiction. In this view of the matter, CRP dismissed.

24.During the Course of the arguments, the learned counsel for the respondents herein/plaintiffs has filed a memo stating that though his caveat has been filed and served upon the parties, the

learned counsel without serving the copy to the advocate on record has made an endorsement as if there is no caveat. Resulting which, the Registry had not print the name of the caveator in the cause list.

25(a).It is also alleged by the learned counsel for the respondents/plaintiffs that he has received a notice of letter dated 05.10.2020 through RPAD sent by Mr.M.Balasubramanian (counsel on record for the revision petitioners), wherein, it is stated as if this Court has granted interim stay on 05.10.2020 and ordered notice returnable by four weeks.

25(b).It is to be stated that 05.10.2020, this Court has not passed any order making such representation and it appears that the advocate on record Mr.M.Balasubramanian taken an adjournment from the trial Court for 55 days. Further this Court on verification by the docket order find that only on 08.10.2020 notice of motion returnable by four weeks was ordered and private notice was permitted and no interim order was granted.

25(c).While this be so, it is not known how Mr.M.Balasubramanian, learned counsel on record for the revision petitioners had issued a notice on 05.10.2020 when no such order

being passed by this Court. Hence, this Court finds that the memo filed by the respondents/plaintiffs, with regard to take action against the said learned counsel viz., Mr.M.Balasubramanian, needs to be probed by Tamil Nadu Bar Counsel as to alleged professional misconduct and hence, this Court hereby directs the Registry to serve the copy of memo of complaint along with enclosure filed by the respondents/plaintiffs, be forwarded to Bar Counsel of Tamil Nadu to take necessary action in accordance with the relevant regulation therefor.

26.As a *prima facie*, this Court finds that on 05.10.2020, no orders have been passed however, Mr.M.Balasubramanian, learned counsel on record has sent a notice through RPAD stating as if an interim order of stay was granted by this Court on 05.10.2020 and also moved to trial Court on the same strength and took a long adjournment. The Bar Counsel of Tamil Nadu shall take this complaint on file and also to collect the letters sent by Mr.M.Balasubramanian, counsel on record dated 05.10.2020 from Mr.A.Erudayam, (counsel for the respondents 2 to 6), the original copy before proceeding and also memo filed by the Trial Court.

RMT.TEEKAA RAMAN. J.

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27.In this view of the matter, this Civil Revision Petition stands dismissed and order passed by the learned III Assistant Judge, City Civil Court, Chennai, in I.A.No.1 of 2020 in O.S.No. 12958 of 2010, dated 18.06.2020, is hereby confirmed. No costs. Consequently, connected Miscellaneous Petition is also closed.

12.02.2021

Index : Yes

Internet : Yes

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To

The III Assistant Judge, City Civil Court, Chennai.

Pre-Delivery Order

in

CRP(PD).No.1852 of 2020
and CMP.No.11109 of 2020

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