

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 15.7.2021.

CORAM

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

C.R.P.(PD) No.1363 of 2017

and

C.M.P.No.6358 of 2017

Vijayakumar

Petitioner

vs.

1. Sumathi

Subramani (Died)

2. Ambiga

3. Ramesh

4. Anbu

Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the Fair and Decreetal order dated 13.2.2017 passed in I.A.No.574 of 2016 in O.S.No.12 of 2012 on the file of the Additional District Munsif, Chengam.

For Petitioner : Mr.C.Munusamy

For R1 to R3 : Mr.P.Mani

ORDER

Civil Revision Petition has been filed by the plaintiff as against the order dated 13.2.2017 passed in I.A.No.574 of 2016 in O.S.No.12

of 2012 on the file of the Additional District Munsif, Chengam.

2. Brief facts behind the filing of the present civil revision petition is as under:-

i) The suit was filed for a permanent injunction restraining the defendants and their men from interfering with the plaintiff's peaceful possession and enjoyment of the suit property. According to the plaintiff, the suit property was originally a Government poramboke land and it was allotted to his mother Jayalakshmi Ammal vide order dated 28.2.1990 of the Special Tahsildar in Reference No.Na.Ka.1526/86, HS and since the original of such proceedings was misplaced, he had filed the certified copy of the same. The mother of the plaintiff had developed the said land and was in possession and enjoyment of the same. She had started to put up two constructions in the said land, however, due to financial issues she had faced, she could not complete the constructions, but, she had been in possession and enjoyment of the same. The suit property bears Plot No.101 as evidenced by the allotment order of the Special Tahsildar. The possession and enjoyment of the suit property on the allotment of the same by the Special Tahsildar is strengthened by the certified copy of the patta produced by the plaintiff. Having found that she could not

maintain the suit property, the mother of the plaintiff had settled the suit property in favour of the plaintiff vide gift settlement deed dated 31.10.2011 and thereby, the plaintiff has become the owner of the suit property and has been in possession and enjoyment of the same. The revenue records viz., Chitta has also been transferred to the name of the plaintiff vide Chitta dated 28.11.2011. When the plaintiff intended to put up new construction after removing the existing ones, defendants 1 and 2 had attempted to encroach the suit property highhandedly with the aid of anti social elements. Hence, the plaintiff had filed the suit originally for permanent injunction.

ii) The defendants filed written statement contending that the suit property was allotted by the Government in her favour and subsequently, she had executed two consent deeds in favour of her brother, the fifth defendant and her husband, the second defendant and they had put up some construction in the suit property with the help of the Fishermen Union and thereby she had denied the title of the plaintiff.

iii) During the trial, the defendants had marked the allotment order in favour of the first defendant, of course, with the objections of the plaintiff, through DW1.

iv) At this stage, having found that the defendants denied the title of the plaintiff, the plaintiff has come forward with the petition under Order VI Rule 17 CPC to amend the plaint to the effect that the suit is one for declaration of his title and for permanent injunction instead of suit for permanent injunction in simplicitor.

v) The first defendant had filed a counter wherein, while denying the title of the plaintiff, she had also denied almost all the averments of the plaintiff and contended as under:-

The suit property was allotted to the first defendant as evidenced by patta dated 28.10.1999 and she had executed two consent deeds in favour of one Thiagarajan and her brother. The title of the first defendant is confirmed by the certificate issued by the Village Administrative Officer dated 25.3.2002. In the written statement filed by the defendants, it was clearly denied that the suit property was neither allotted to the mother of the plaintiff nor it was settled by her on the plaintiff. Therefore, the present petition is filed by the plaintiff after lapse of 4 years from the date of filing of the written statement only to drag on the proceedings and it is not at all maintainable since the entire cause of action itself is sought to be changed. The petition is also barred by limitation as it was filed after four years from the

date of filing of the written statement.

vi) The Trial Court, having found that the petition is a time barred one, dismissed the same. Aggrieved against the same, the plaintiff has come forward with the present civil revision petition.

3. Having heard the learned counsel appearing for the parties and perused the materials available on record, this court finds that the plaintiff had come forward with the suit on 7.1.2012 seeking for a permanent injunction against the defendants and the defendants have filed their written statement on 18.7.2012 itself specifically denying the title of the plaintiff, however, the plaintiff instead of seeking for the amendment immediately, had preferred the petition seeking amendment after lapse of about four years which is clearly barred by limitation in view Article 58 of the Limitation Act which prescribes a period of 3 years for filing the suit for declaration. Further, the plaintiff/revision petitioner has not averred in his petition anything to the effect that despite his due diligence, he could not raise the matter before the trial had commenced, in compliance of Order VI Rule 17 CPC.

4. Order VI Rule 17 CPC makes it clear that no application for amendment shall be allowed after trial has commenced unless the

court comes to the conclusion that inspite of due diligence, the party could not raise the matter before the trial had commenced.

5. The Hon'ble Supreme Court in **M.REVANNA v. ANJANAMMA (DEAD) BY LEGAL REPRESENTATIVES AND OTHERS ((2019) 4 SCC 332)** , while upholding the order of the High Court, rejected the plea of the plaintiff therein to grant permission for amendment of the plaint on two grounds, viz., (i) the application is a belated one; and (ii) not a bona fide one. It has further held that if the amendment application is allowed, it would change the nature and character of the suit and lead to a travesty of justice, inasmuch as the Court would be allowing the plaintiffs therein to withdraw their admission made in the plaint. The relevant portion of the decision is extracted hereunder for ready reference:-

" 7. Leave to amend may be refused if it introduces a totally different, new and inconsistent case, or challenges the fundamental character of the suit. The proviso to Order VI Rule 17 of the CPC virtually prevents an application for amendment of pleadings from being allowed after the trial has commenced,

unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of the trial. The proviso, to an extent, curtails absolute discretion to allow amendment at any stage. Therefore, the burden is on the person who seeks an amendment after commencement of the trial to show that in spite of due diligence, such an amendment could not have been sought earlier. There cannot be any dispute that an amendment cannot be claimed as a matter of right, and under all circumstances. Though normally amendments are allowed in the pleadings to avoid multiplicity of litigation, the Court needs to take into consideration whether the application for amendment is bona fide or mala fide and whether the amendment causes such prejudice to the other side which cannot be compensated adequately in terms of money.

.....

9. Having regard to the totality of the facts and circumstances of the case, we are of the considered opinion that the application for amendment of the plaint is not only belated but also not bona fide, and if allowed, would change the nature and character of the suit. If the application for amendment is allowed, the same would lead to a travesty of justice, inasmuch as the Court would be allowing Plaintiff Nos. 1 to 5 to withdraw their admission made in the plaint that the partition had not taken place earlier. Hence, to grant permission for amendment of the plaint at this stage would cause serious prejudice to Plaintiff No. 6/Respondent No. 1 herein.

8. Accordingly, the order of the High Court quashing the order of the Trial Court dated 14.11.2008, which had allowed the application for amendment of the plaint, is hereby confirmed. The appeal fails and is hereby

dismissed."

6. In **PANDIT MALHARI MAHALE v. MONIKA PANDIT MAHALE AND OTHERS ((2020) 11 SCC 549)**, while allowing the Civil Appeal and thereby setting aside the order of the High Court as well as of the Civil Judge and consequently dismissing the amendment application on the ground of lack of finding by the Civil Judge with regard to due diligence, the Hon'ble Supreme Court, referring to the decision in **VIDYABAI v. PADMALATHA ((2009) 2 SCC 409)** has observed as under:-

"7. In the present case, the Civil Judge has not returned any finding that the Court is satisfied that in spite of due diligence, the party could not have raised the matter before the commencement of trial. In Vidyabai & Ors. v. Padmalatha & Anr. [(2009) 2 SCC 409], this Court observed in para 19 as under:

"19. It is primal duty of the Court to decide as to whether such an amendment is necessary to decide the real dispute between the parties. Only if such a condition is fulfilled,

the amendment is to be allowed. However, proviso appended to Order 6 Rule 17 of the Code restricts the power of the court. It puts an embargo on exercise of its jurisdiction. The court's jurisdiction in a case of this nature is limited. Thus unless the jurisdictional fact, as envisaged therein, is found to be existing, the court will have no jurisdiction at all to allow the amendment of the plaint."

8. There being no finding by the Court that the Court is satisfied in spite of due diligence, the party could not introduce amendment before commencement of the trial, the order of the Trial Judge is unsustainable. The High Court has not adverted to the above aspect of the matter. In view of aforesaid, we allow the appeal and set aside the order of the

High Court as well as of the Civil Judge, the amendment application stands dismissed."

7 In *L.C.Hanumanthappa v. H.B.Shivakumar* ((2016) 1 SCC 332) , the Hon'ble Apex Court has held as under:-

"29. Applying the law thus laid down by this Court to the facts of this case, two things become clear. First, in the original written statement itself dated 16th May, 1990, the defendant had clearly put the plaintiff on notice that it had denied the plaintiff's title to the suit property. A reading of an isolated para in the written statement, namely, para 2 by the trial court on the facts of this case has been correctly commented upon adversely by the High Court in the judgment under appeal. The original written statement read as a whole unmistakably indicates that the defendant had not accepted the plaintiff's title. Secondly, while allowing the amendment, the High Court in its earlier judgment dated 28th March, 2002 had expressly remanded the matter to the trial court, allowing the defendant to raise the plea of limitation. There can be no doubt that on an application of Khatri Hotels Private Limited

(supra), the right to sue for declaration of title first arose on the facts of the present case on 16th May, 1990 when the original written statement clearly denied the plaintiff's title. By 16th May, 1993 therefore a suit based on declaration of title would have become time-barred. It is clear that the doctrine of relation back would not apply to the facts of this case for the reason that the court which allowed the amendment expressly allowed it subject to the plea of limitation, indicating thereby that there are no special or extraordinary circumstances in the present case to warrant the doctrine of relation back applying so that a legal right that had accrued in favour of the defendant should be taken away. This being so, we find no infirmity in the impugned judgment of the High Court. The present appeal is accordingly dismissed."

8. The proviso to Order VI Rule 17 of CPC prevents Application for amendment of pleadings from being allowed after the trial has commenced, unless the Court comes to the conclusion that inspite of due diligence, the party could not have raised the matter before the

commencement of the trial. The proviso, to an extent, curtails absolute discretion to allow amendment at any stage thereby shifting the burden on the person, who seeks an amendment after commencement of the trial to show that inspite of due diligence, such an amendment could not have been sought earlier. Though, normally, amendments are allowed in the pleadings to avoid multiplicity of litigation, the court needs to take into consideration whether the Application for amendment is *bona fide* or *mala fide* and whether the amendment is necessary to decide the real dispute between the parties and whether the amendment causes such prejudice to the other side which cannot be compensated adequately in terms of money.

9. In the case on hand, it is seen that the trial had already commenced and it has reached the stage of examination of witnesses on the side of the defendants. The denial of title of the plaintiff to the suit property was made by the defendants in their written statement on 18.7.2012 itself whereas the plaintiff had preferred the application seeking amendment, which would change the nature of the suit claim itself, only after four years during the middle of the trial. The Trial court, having rightly observed the above aspects, has dismissed the

Application seeking the amendment. In view of the same, the civil revision petition stands dismissed confirming the order passed by the court below.

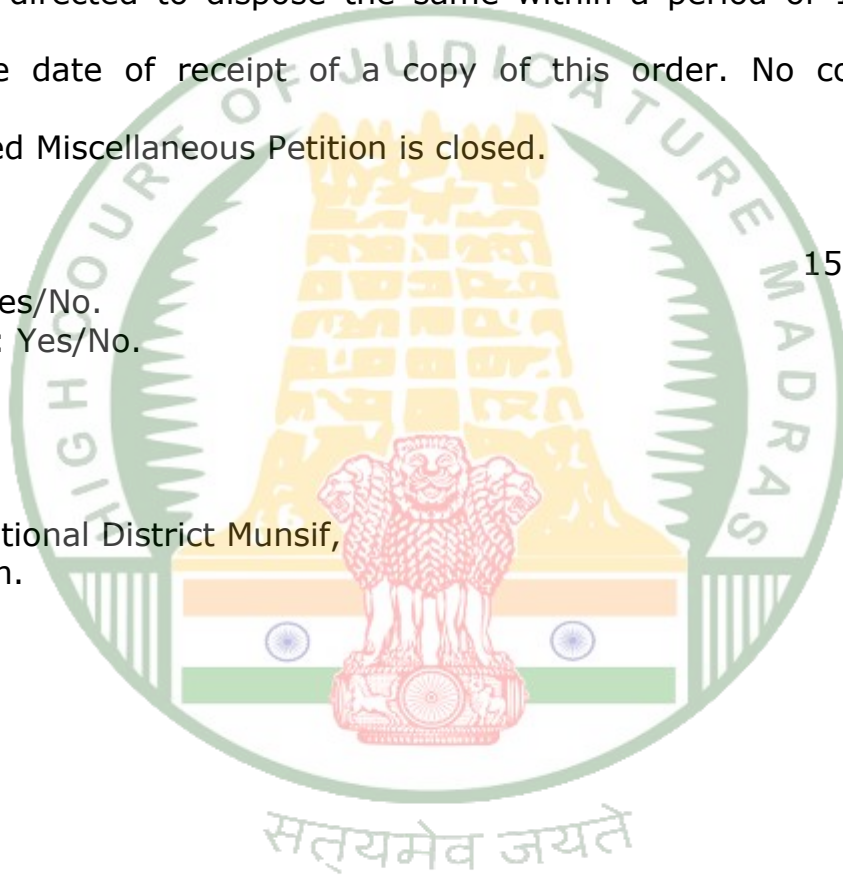
10. Considering the long pendency of the Original Suit, the Trial Court is directed to dispose the same within a period of 12 months from the date of receipt of a copy of this order. No costs. The connected Miscellaneous Petition is closed.

15.7.2021.

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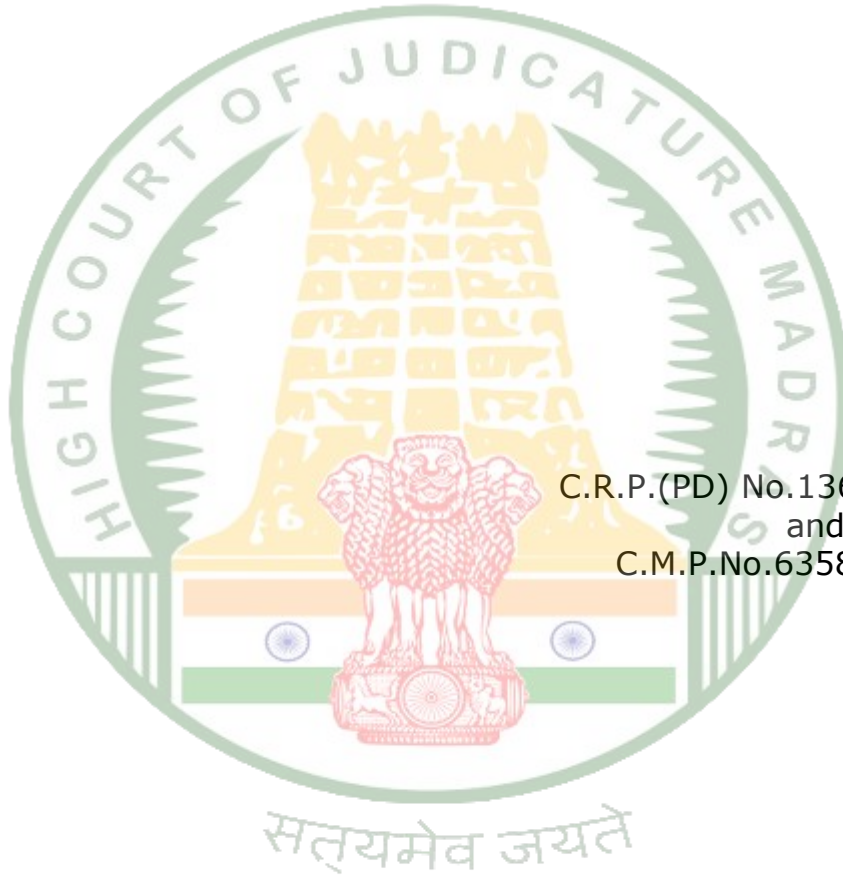
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A.D.JAGADISH CHANDIRA, J.

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