

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 28.6.2021.

CORAM

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

C.R.P.(PD) No.3157 of 2017

and

C.M.P.No.14813 of 2017

Rajendiran (Died)

1. Dhanalakshmi
2. Muthulakshmi
3. Chellapandi
4. Rathi

Petitioners

vs.

Palayam (Died)

1. Vasantha
2. Kanchana
3. Jhonson
4. Reeta
5. Parimala
6. Victor
7. Stalin
8. George

Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 13.6.2017 passed in I.A.No.186 of 2017 in O.S.No.603 of 2007 on the file of the District Munsif, Thiruvallur.

For Petitioner : Mr.R.Sunilkumar

For Respondents : Mr.Jaikumar Ranganathan for
Mr.K.Balaji

ORDER

Civil Revision Petition has been filed as against the order dated 13.6.2017 passed in I.A.No.186 of 2017 in O.S.No.603 of 2007 on the file of the District Munsif, Thiruvallur.

2. Petitioners are defendants 2 to 5 in O.S.No.603 of 2007 filed by one Palayam, who is the father of the respondents herein.

3. 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. The plaintiff had claimed to be a cultivating tenant of the suit schedule property.

4. The second defendant had filed a written statement denying that the plaintiff was a cultivating tenant.

5. The Trial Court framed issues and after framing of issues, the case was taken up for trial and the plaintiff had filed a proof affidavit and he was cross examined by the defendants. Apart from the plaintiff, three more witnesses had been examined as PW2 to PW4 and they had also been cross examined. On the side of the defendants, the second defendant was examined and cross examined. At that stage, the plaintiff, Palayam had passed away. The legal heirs of the plaintiff

had filed a petition under Order VI Rule 17 CPC seeking to implead themselves as Legal Representatives of the deceased plaintiff and to amend the plaint by adding the following contents as para 5(a) in the plaint:-

"The plaintiffs 2 to 9 submits that these plaintiffs have worked alongwith the 1st plaintiff in the suit schedule mentioned properties. This 2nd plaintiff's husband being cultivating tenant with regard to suit schedule mentioned properties and these plaintiffs 2 to 9 are also continued to be in possession and enjoyment as cultivating tenants on the basis of tenancy holding over. Now, these plaintiffs are in possession and enjoyment as tenants over the suit schedule mentioned properties."

6. The revision petitioners/defendants have filed a counter expressing no objection for impleading the legal representatives of the plaintiff, however, opposing to amend the plaint by adding para 5(a) in the plaint. They have contended that it was sought to be added by the legal heirs of the plaintiff to introduce new facts.

7. The Trial Court, by order dated 13.6.2017, allowed the said I.A. in toto as against which the present revision petition has been filed.

8. The learned counsel Mr.Sunilkumar appearing for the revision petitioners/defendants would submit that the father of the respondents herein had filed the suit claiming himself to be the cultivating tenant and the second defendant in the suit, being purchaser of the suit schedule property, had denied such a claim by filing a written statement. He would further submit that issues were framed in the suit, trial had commenced and after examination and cross examination of P.Ws.1 to 4 and DW1, the sole plaintiff had passed away and thereafter, a petition was filed by his legal representatives to implead themselves and to introduce a new pleading by adding para 5(a) in the plaint.

9. The learned counsel for the petitioners would further submit that the Trial Court, without taking into consideration the fact that the plaintiff has not averred in the plaint that alongwith him, his family members were also cultivating the property by putting in manual labour and it is also not in evidence of the plaintiff that he and his family members were cultivating the property together and only after

the trial had progressed to an extent and almost at the verge of completion of the trial, the legal representatives of the plaintiff had attempted to introduce a new pleading which would amount to alternate the very nature of the suit.

10. The learned counsel for the revision petitioners would further submit that 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 and nothing has been averred by the respondents herein, before the Trial Court that inspite of due diligence, their father was unable to raise the matter before commencement of trial and by way of amendment, the respondents were not attempting to introduce new pleadings, however, the Trial Court, without considering those aspects, had passed an erroneous order.

11. The learned counsel for the petitioner would further submit that admittedly, the plaintiff, who is the father of the respondents, had admitted in cross examination that he was not cultivating the property. Further, PW2 had also admitted that there was no cultivation in that area for the past 20 years. PW3 had also admitted in his cross

examination that for the past 18 years, there was no cultivation in that area. Whiles, the respondents/petitioners are trying to introduce a new plea which would definitely affect the nature and character the suit and the Trial Court, without considering the same and without satisfying itself as to whether the conditions specified in Order VI Rule 17 CPC have been complied with, has passed an erroneous order merely by observing that the revision petitioners will be given opportunity to raise objection for the same by filing additional written statement and subjecting the proposed petitioners for cross-examination.

12. In support of his contention, the learned counsel for the petitioner relied upon a judgment of the Hon'ble Supreme Court in **M.REVANNA v. ANJANAMMA (DEAD) BY LEGAL REPRESENTATIVES AND OTHERS ((2019) 4 SCC 332) and PANDIT MALHARI MAHALE v. MONIKA PANDIT MAHALE AND OTHERS ((2020) 11 SCC 549).**

13. The learned counsel for the respondents herein would submit that the respondent's father died on 1.3.2016 and they have filed a petition to get themselves impleaded in the suit and also to add para 5(a) to the plaint to the effect that they had worked with their father in

cultivating the suit land and they are continuing in possession and enjoyment of the suit schedule property as cultivating tenants on the basis of tenancy holding over. By the new plea, the nature and character of the suit does not get altered. Further, the Trial Court had also granted opportunity to the petitioners/defendants to file additional written statement and to subject the proposed parties for cross examination and thereby, no prejudice is caused to the petitioners/defendants. The learned counsel for the respondents would submit that the order of the Trial Court suffers no infirmity and therefore, would pray that the revision petition may be dismissed.

14. Heard the learned counsel appearing for the parties and perused the materials available on record.

15. The suit was filed by the father of the respondents herein in the year 2007. Nowhere in the plaint, it has been pleaded by the father of the respondents that he alongwith his family members were engaged in cultivating the land contributing physical labour. Further, in this case, the petitioners/defendants have filed a written statement denying that the plaintiff was a cultivating tenant. Issues were framed and the case was taken up for trial and on the side of the plaintiff he was examined and 3 other witnesses were examined and cross

examined.

16. A perusal of the evidence adduced by the parties would establish that the plaintiff himself, during the cross examination, had admitted that he was not cultivating the land. Whiles, the plaintiff died on 1.3.2016 and the respondents herein filed a petition under Order VI Rule 17 CPC to implead themselves and to add para 5(a) to the plaint. Though the defendants have expressed no objection for impleading the legal representatives of the plaintiff, they have specifically objected to adding of para 5(a).

17. In the Affidavit filed in support of I.A.No.186 of 2017, the respondents have not pleaded that inspite of due diligence their father could not raise the matter before the trial had commenced. The Trial Court also did not return a finding that the court is satisfied that inspite of due diligence, the plaintiff could not raise the matter before commencement of trial.

18. In ***M.REVANNA v. ANJANAMMA (DEAD) BY LEGAL REPRESENTATIVES AND OTHERS ((2019) 4 SCC 332)***, the Hon'ble Apex court, 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."

19. In the case on hand, the original plaintiff, father of the respondents, had never taken a stand in his plaint that his family members were also contributing their labour in the cultivation of the suit schedule property. In fact, he himself has admitted in his cross examination that there was no cultivation in that area for about 20 years. Further, the other witnesses viz., P.Ws.3 and 4 have admitted in

their cross examination that the suit property and other similarly placed lands had been cultivated by using the nearby lake water and now, after an acquisition of lands by the Tamil Nadu Housing Board for housing scheme in that area, due to lack of water in the lake, there had been no cultivation of any land. But, now, strangely, after the death of the original plaintiff, his legal representatives, who seek to implead themselves in the suit by stepping into the shoes of the plaintiff, also seek to introduce such a new pleading as if they had worked with their father in cultivating the suit schedule property. When the deceased plaintiff himself had contradicted his own claim of cultivation of the suit schedule property, it is beyond the level of imagination that his legal representatives had contributed their labour in cultivating the suit schedule property.

20. 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."

21. In the instant case, though the original plaintiff had not taken any steps to raise the additional pleadings to the effect that his family members were also contributing their labour in cultivating the suit schedule property till the evidence on the side of the plaintiff was completed and DW1 was also examined and cross examined. The

worst case being that not only the plaintiff but also the other witnesses examined on the side of the plaintiff have admitted, during the cross examination, that there was no cultivation for about 20 years in that area.

22. 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.

23. In this case, as stated above, the case is at the fag end of trial. The father of the respondents had, nowhere, claimed that he was cultivating the lands alongwith his family members contributing their manual labour.

24. The court below, without considering the above aspects, has mechanically allowed the Application seeking to raise additional pleadings while permitting the impleadment sought for. The order of the Trial Court, without there being a finding with regard to diligence on the part of the plaintiff to raise the additional pleadings before commencement of trial and his inability to do so, is erroneous. In view of the same, the civil revision petition stands partly allowed. The order passed by the Trial Court in impleading the legal representatives alone is confirmed and it is set aside so far as permitting the additional pleadings as para 5(a).

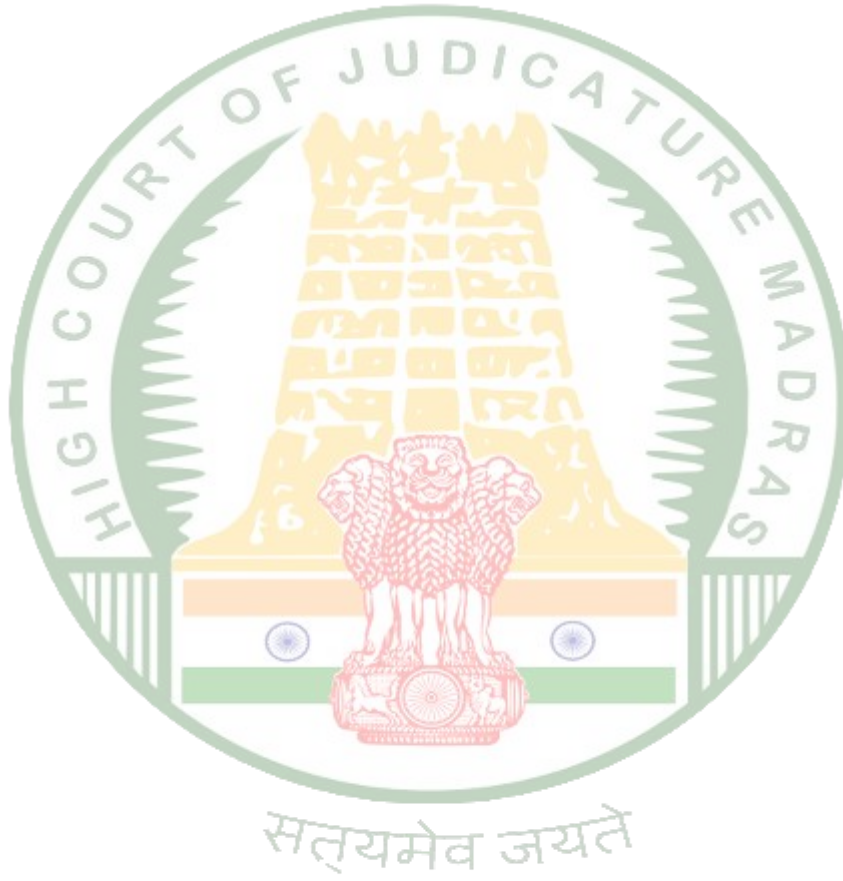
25. Considering the long pendency of the Original Suit, the Trial Court is directed to dispose the same within a period of 12 months from the date of receipt of a copy of this order. No costs. The connected Miscellaneous Petition is closed.

28.6.2021.

Index: Yes/No.
Internet: Yes/No.
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To

The District Munsif,
Thiruvallur.



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A.D.JAGADISH CHANDIRA, J.

Ssk.



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