

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 10TH DAY OF FEBRUARY 2021

THE HON'BLE MR. JUSTICE R.PONGIAPPAN

A.No.9133 of 2018
IN
O.P.No.860 of 2016

In the matter of Guardian and Wards
Act 1890
and
In the matter of Shivdevan – Minor

Ms.Abirami Kalyanasundaram,
D/o. Kalyanasundaram
L 1, Rohini Gardens,
Santhome High Road, Raja Annamalaipuram
Chennai 600 028. ...Petitioner

Mr.S.Sakthivel
S/o. Dr.R.Sundaravadivelu
Flat 10H, Block 2,
Ramaniyam Sanjivini
72/1, Dr.Muthulakshmi Salai,
LB Road, Thiruvanmiyur,
Chennai-600 041. : Respondent

A.No.9133 of 2018:

Ms.Abirami Kalyanasundaram, Age 34,
D/o. N.Kalyanasundaram
L 1, Rohini Gardens,
Santhome High Road, Raja Annamalaipuram
Chennai - 600 028.

...Applicant/Petitioner

Vs

Mr.S.Sakthivel, Age 35,
S/o. Dr.R.Sundaravadivelu
Flat 10-H, Block No.2,
Ramaniyam Sanjivini Apartments,
72/1, Dr.Muthulakshmi Salai,
L.B. Road, Thiruvanniyur,
Chennai-600 041.

: Respondent/Respondent

Application praying that this Hon'ble court be pleased to
amendment of the pleading by incorporating the following paragraphs 8(A)
to 8(J) in O.P.No.860 of 2017 not be allowed.

This application coming on this day before this court for hearing
the court made the following order:

The petitioner in O.P.No.860 of 2016, had filed this application
under Order XIV Rule 8 r/w Order VI Rule 17 of CPC, praying to amend
the petition filed in O.P.No.860 of 2016.

2. Heard Mr.K.Raja, learned counsel appearing for the
applicant/petitioner as well as Mr.Prumbulavil Radhakrishnan, learned
counsel appearing for the respondent and perused the materials available on
record.

3. The learned counsel for the applicant/petitioner would contend
that during the time of filing the Original Petition, the applicant herein, has

inadvertently not mentioned the character and attitude of the respondent and also about the behaviour having by him towards the minor child. Since, the Original Petition is in the stage of argument, in order to prove the allegation levelled against the respondent, it is appropriate for her to file this application, for amending the petition. Therefore, according to the learned counsel, for rendering real justice, amendment is necessary in the petition filed in OP No.860 of 2016.

4. In response to the submission made by the learned counsel appearing for the applicant/petitioner, the learned counsel appearing for the respondent would contend, previously, the applicant herein/petitioner, filed a similar application and thereafter, for the reasons best known to her, she withdrew the application. Further, he would submit that by way of this application, the applicant/petitioner is attempting to introduce a new case and therefore, granting permission to amend the petition, is unnecessary.

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5. The further case of the respondent is that when the purpose of filing OP No.860 of 2016, is for the custody of minor child, making further allegation against the respondent is unnecessary for deciding the Original Petition and therefore, the application is liable to be dismissed.

6. To substantiate the contention raised by the learned counsel appearing for the applicant/petitioner, he relied on the judgment of this Court in ***Marakkal & Another Vs. Maran & Others***, reported in **CDJ 2013 MHC 2797**, wherein, this Court observed as follows:

“10.Furthermore, an error or mistake, which if not fraudulent, should not be the ground for rejecting the Application for amendment of pleadings. If the amendment/amendments sought for in the amendment Application goes to the very root of the matter or it concerns with the real issues in controversy between the respective parties, the said Application/amendment, in the considered opinion of this Court, ought to be allowed, notwithstanding the fact there may be a negligent, omission, on the part of a particular party in regard to the inordinate or long delay that has occurred relating to the proposed amendment. It is the discretionary of the Court before which the Application comes for hearing when deals with an amendment Application seeking amendment of Plaintiff. Order 6 Rule 17 of Civil Procedure Code is not restricted or controlled by Order 7 Rule 11. While allowing an amendment application in respect of pleadings, a Court of Law cannot go into the merits and demerits of the amendment. 11.No wonder, the rules of procedure are only handmaid of Justice. A party/parties should not be denied/refused the just relief, because of some inadvertence, mistake or negligent or even the infraction of rules of procedure whether it is committed by a Court of Law or by the parties to the litigation in any manner or in whatever possible manner. That apart, when a Court of Law deals with an Amendment Application (filed under Order 6 Rule 17 of Civil Procedure Code), it can be filed either by the Plaintiff or by the Defendant as the case may be.”

As per the said observation, it is made clear that this type of application, has to be dealt with by this Court with lenient view.

7. On the other hand, now, on going through the Original Petition, it appears that the same has been filed under Sections 3, 7 to 10 of Guardian and Wards Act, 1980 r/w Order XXI Rule 2 and 3 of Original Side Rules, praying for the relief of declaration, declaring the petitioner as the Guardian of the minor child-Shivdevan, till he attains majority.

8. Now, on considering the prayer sought by the petitioner/applicant, in general, in cases filed for the guardianship, the only thing to be seen by the Guardianship Court is the future and the welfare of the child and what will be in the best interest of the child. For this purpose, the parties can bring to the notice of the Court the past attitude of the mother or father towards the child, attachment of the child, etc. Further, the parties can also bring forth the financial aspect and there were habits in the parents which were not good for the growth of the child. The Guardianship Court cannot go into allegations or counter allegations of cruelties towards each other, misbehaviour towards each other.

9. Now, on going through the application filed by the petitioner under Order VI Rule 17 CPC, in major part contains only allegations against the respondent. As already observed, those factors are not at all necessary for considering the Original Petition. In fact in the Original Petition itself,

the petitioner has raised so many allegations against the respondent. In otherwise, in the present application, in respect to the welfare of the minor child, nothing has been averred and thereby, the same itself is sufficient to hold that the amendment of petition, is unnecessary for deciding the Original Petition. The petitioner would be at liberty to depose on all those aspects which are relevant for showing that the welfare of the child, lies in giving custody of the child to her.

10. Accordingly, this Court is of the considered view that this application is liable to be dismissed. More than that, after filing Original Petition in the year 2016, filing this application for amendment of petition, in 2018, is an unnecessary one.

11. Hence, in view of the above, this application is dismissed.

List the Original Petition for hearing on 03.03.2021.

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Sd/- R.P.A.J.
10.02.2021

//Certified to be a true copy//

Dated this the day of 2021.

SU.12.02.2021

COURT OFFICER(O.S.)

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.