



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.02.2021

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THE HON'BLE MRS.JUSTICE J.NISHA BANU

WEB COPY

C.R.P(MD)No.187 of 2021

and

C.M.P(MD).No.1122 of 2021

Rajagopal

... Petitioner / Petitioner/
Appellant

Vs.

Dhanapackiyam (Died)

1. Nagarajan

2. Rajeswari

.... Respondents/ Respondents/
Respondents

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the order dated 15.10.2020, passed in I.A.No.29 of 2019 in A.S.No.17 of 2015 on the file of the Subordinate Court, Pattukottai, and to allow this Civil Revision Petition.

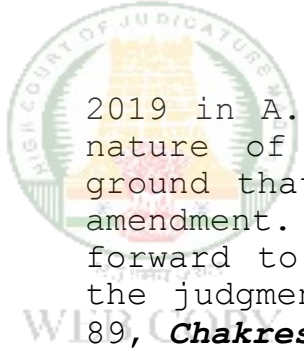
For Petitioner : Mr.P.Thirumahilmaran

ORDER

This Civil Revision Petition is filed to set aside the order dated 15.10.2020, made in I.A.No.29 of 2019 in A.S.No.17 of 2015 on the file of the Subordinate Court, Pattukottai.

2. The revision petitioner is the appellant/plaintiff and the respondents herein are the respondents/defendants in the suit in O.S.No.142 of 2011 and in A.S.No.17 of 2015.

3. The learned counsel for the petitioner would submit that the petitioner has filed a suit in O.S.No.142 of 2011 on the file of the District Munsif Court, Pattukottai for partition, declaring half share in the suit schedule property. The said suit was dismissed, as against which, first appeal was preferred in A.S.No.17 of 2015 on the file of Subordinate Court, Pattukottai. Pending the first appeal, the petitioner filed amendment application in I.A.No.29 of



2019 in A.S.No.17 of 2015. The Court below without considering the nature of the amendment application, dismissed the same on the ground that new facts have been brought in the petition by way of amendment. Aggrieved over the same, the revision petitioner came forward to file the present revision petition, placing reliance on the judgment of the Hon'ble Supreme Court reported in 2017 (3) CTC 89, **Chakreshwari Construction Pvt. Ltd. vs. Manohar Lal**

4. Heard the learned counsel for the petitioner and perused the materials placed before this Court.

5. Before discussing the merits of the case, the relevant portion of the judgment of the Hon'ble Supreme Court reported in 2017 (3) CTC 89, **Chakreshwari Construction Pvt. Ltd. vs. Manohar Lal**, relied on by the petitioner is extracted hereunder:-

"13) Having heard the learned counsel for the parties and on perusal of the record of the case, we are inclined to allow the appeals and while setting aside of the impugned orders, allow the aforementioned applications of the appellant.

14) The principle applicable for deciding the application made for amendment in the pleadings remains no more res integra and is laid down in several cases. In the case of *Revajeetu Builders and Developers vs. Narayanaswamy & Sons and Others*, (2009) 10 SCC 84, this Court, after examining the entire previous case law on the subject, culled out the following principle in Para 63 of the judgment which reads as under:

"63. On critically analysing 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 multiple litigation;

(5) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the



(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 6 Rule 17. These are only illustrative and not exhaustive."

While applying the above principles of law to the facts and circumstances of the present case, I am of the considered opinion that the above judgment is not applicable to the present facts and circumstances of the case.

6. Now coming to the present case on hand, a perusal of record shows that the suit is of the year 2011 and the written statement was filed on 18.04.2013. It is specifically pleaded in the written statement that there was an oral partition happened among the sharers, 45 years ago from the date of filing of the written statement. The said factum was discussed during evidence while marking Ex.B7 sale deed executed on 07.03.1982. On 07.04.2015, the defendant No.2 examined himself as D.W.1 and relied on the copy of the sale deed Ex.B7 executed by the plaintiff on 07.03.1982.

7. A perusal of judgment also shows that the D.W.1 was cross examined by the plaintiff and suggestions are also put forth about Ex.B7. In such circumstances, the plaintiff/appellant without taking any steps to amend the plaint, even after the cross examination of D.W.1, had participated in the suit and it was disposed on 03.08.2015. Against the finding of the trial Court, A.S.No.17 of 2015 and when the matter has been posted for argument, the petitioner herein has come out with the application to amend the plaint by introducing a case relating to Survey No.16 of 2010, after the amendment of the Order VI Rule 17 CPC during the year 2012 no application for amendment can be allowed after the commencement of trial and the same mandate that there can be a relaxation only if the party pleaded about due diligence for not bringing the proposed amendment prior to the commencement of the trial. Even assuming if the petitioner had a case to amend the plaint, he could have sought for amendment at least after cross examination of D.W.1, the petitioner has participated in the proceeding and now at the stage of argument in the appeal, the present amendment application has been filed. Even in the present application and the affidavit filed in support of the petition has not pleaded in spite of his due diligence he was not able to amend the plaint. Therefore, the learned Judge has rightly dismissed the petition and therefore, the above judgment relied on by the petitioner supports the case of the respondent. I do not find any infirmity in the order passed by the learned Judge.



8. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar(CS)

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To

1. The Subordinate Court,
Pattukottai.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court, Madurai. (2C)

+1 CC to M/s.P.THIRUMAHILMARAN, Advocate (SR-4816[F] dated
12/02/2021)

C.R.P(MD)No.187 of 2021

11.02.2021

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