



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

C.R.P. (MD) No.1671 of 2014

and M.P (MD) No.1 of 2014

WEB COPY

I.Suresh

... Revision Petitioner/ Petitioner/
Plaintiff

-Vs-

K.Velayuthan Pillai

... Respondent/ Respondent/Defendant

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the Order and Decreetal made in I.A.No.170 of 2014 in O.S.No.146 of 2011, dated 03.07.2014 on the file of Additional District Munsif Court, Eraniel.

For Petitioner : Mr.V.M.Balamohan Thambi

For Respondent : Mr.C.Kishore

O R D E R

This Civil Revision Petition has been filed against the order dated 03.07.2014 passed in I.A.No.170 of 2014 in O.S.No.146 of 2011, on the file of the Additional District Munsif Court, Eraniel.

2. Brief facts behind filing of the present Civil Revision Petition are as under:

2.i) The suit was filed by the petitioner/plaintiff for declaration declaring that the plaint C schedule is the integral part of the plaint 'A' schedule property and the plaintiff is the owner of it; for mandatory injunction directing the defendant to remove the western side compound wall of the plaint 'B' schedule property constructed over the plaint 'C' schedule property at his cost; for recovery of possession of the plaint 'C' schedule property and for permanent injunction restraining the defendant, his men agents, servants or power holders from encroaching any area from the plaint 'A' schedule property and for removing the old eastern side compound wall of the plaint 'A' schedule property.

2.ii) According to the plaintiff, the plaintiff is the owner of the plaint 'A' schedule property. The plaintiff became owner of the plaint 'A' schedule property as per the sale deed



No.3434/07 executed before the Eraniel Sub Registrar on 13.09.2007. It is the case of the plaintiff that the plaint schedule property is lying as a single plot, the shape of the property is like a cricket bat. The northern side portion is narrow and the southern side portion is wide. When the plaintiff purchased the plaint 'A' schedule property, the northern side narrow area was covered with a old brick compound wall on the eastern, northern and western side of the property. To the knowledge of the plaintiff, the old compound wall was constructed by the vendor of the plaintiff Mr.Ramanathan in the year 1991.

2.iii) It is the further case of the plaintiff that the defendant is the owner of the plaint 'B' schedule property, which was lying on the eastern side of the plaint 'A' schedule property. The defendant had purchased the plaint 'B' schedule property in the year 1986 before the vendor of the plaintiff had purchased the plaint 'A' schedule property. The plaintiff had put up a residential house in the southern side wide portion of the plaint 'A' schedule property and has been living in the house with his wife and children. When the defendant purchased the plaint 'B' schedule property, an old tiled roofing building was inside the property. In between the old house wall and the plaint 'A' schedule property, there was some vacant land. That vacant area was the integral part of the plaint 'A' schedule property. That area is described as plaint 'C' schedule property in the suit. The defendant didn't maintain his old house, so it decayed. The western side wall of the house fell down in the plaint 'C' schedule area. It caused much inconvenience to the plaintiff to the free enjoyment of his property. The request of the plaintiff to remove the waste material available in the plaint 'C' schedule was not accepted by the defendant. The plaintiff had arranged windows to his house only on the eastern side of his house and was freely enjoying the sun light and air through the plaint 'C' schedule property ever since he has put up his house in the plaint 'A' schedule property. It is the further case of the plaintiff that the area in which the defendant had constructed a compound wall on the western side in the plaint 'B' schedule property was encroached by the defendant by force and that the defendant is liable to surrender the area. The suit has been filed to recover the plaint 'C' schedule property with the declaration of relief against the defendant to remove western side of plaint 'B' schedule property and plaint 'C' schedule property and for the permanent injunction.

3. The respondent filed a written statement denying the case of the plaintiff and the crux of the case of the defendant is as under:-

(i) The sale deed dated 13.09.2007 and the sale deed dated 21.10.1991 in favour of the plaintiff and the vendor to the



plaintiff are void documents. The total property of 5 cents never comes within R.S.No.481/21 of Eraniel Village. The vendor to the defendant alone is having right over 6 1/2 cents in R.S.No.481/21 of Eraniel Village with a house bearing door No. VIII / 28-16 of Eraniel Panchayat. The vendors to the vendors of the defendant sold only one cent in R.S.No.481/21 of Eraniel Village to the vendor to the vendor of the plaintiff. Hence the plaintiff is having only one cent in R.S.No.481/21 of Eraniel Village. The remaining property is in R.S.No.481/22 of Eraniel Village. By creating fraud and fabricating documents, the plaintiff and his vendor tried their level best to create right over R.S.No.481/21 of Eraniel Village instead of R.S.No.481/22 of Eraniel Village. The plan attached along with the sale deed of the vendor to the plaintiff is totally against the fact and lie of the property in the spot and as per resurvey plan. The vendor to the plaintiff and the plaintiff has no right over the old brick compound wall on the western side to the length of 11.50 metres with old rubble basement on the north to south on the western boundary of the defendant. The brick compound wall as well as the old rubble basement is constructed by the vendors to the defendant only on the western boundary of the defendant's property.

(ii) The defendant is the owner having title and possession over the B schedule property and C schedule property in R.S.No.481/21 of Eraniel Village. The plaintiff has put up the construction only in R.S.No.481/22 and not in the A schedule as stated in the plaint. Moreover, the plaintiff never adopted and followed the Panchayat Building Rules and the construction of the building is totally against the Panchayat Building Rules and it has to be removed. There is no A schedule property in the spot. There is no vacant land in the spot as stated in the plaint. The plaintiffs property is only in R.S.No.481/22 of Eraniel Village. The plaint C schedule property is not within the property of the plaintiff but on the other hand it is the part of the defendant's property and it is only in R.S.No.481/21 of Eraniel Village. The plaintiff damaged the western wall of the defendant's house by using the circumstances that the defendant is at Mumbai. In due course, the plaintiff pulled down the western wall of the defendant's house and thereby caused a heavy loss to the defendant and due to that, the total house of the defendant is collapsed. The defendant never caused any inconvenience to the plaintiff to enjoy his property in R.S.No.481/22 of Eraniel Village.

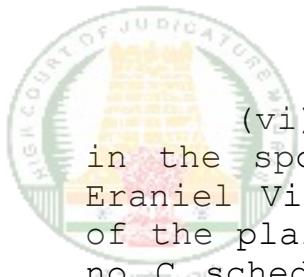
(iii) The C schedule property is the part of R.S.No.481/21 of Eraniel Village which belonged to the defendant alone. The plaintiff gave a false complaint to the Panchayat and the Panchayat gave a notice to the defendant. In the meantime, the defendant submitted a Plan for approval before the Executive Officer of the Eraniel Panchayat on 12.05.2011 for the new



construction in defendant's property. The defendant stopped the work and waiting for the approval as per the Panchayat Act. The defendant has not completed his construction work after the notice of the Panchayat. The defendant constructed the compound wall on the old rubble basement only in part and not fully. The defendant stopped the construction as soon as he received the notice from the Panchayat. The defendant has constructed the compound wall on the old basement only in his property and on the other hand, the plaintiff constructed the house in R.S.No.481/22 of Eraniel village without following the Panchayat Rules and hence, the question of free air and light will not arise in this case. Hence the Eraniel Panchayat is a necessary party to the case.

(iv) On the western boundary of the defendant's property in R.S.No.481/21, there is a very old rubble basement wall and from south to north upto the length of 98 links over the old rubble basement there was a mud compound wall and that portion was pulled down by the plaintiff and hence, the defendant constructed compound wall over that old rubble basement and also constructed compound wall over 8 links towards western side and then proceeded to make construction over the remaining portion towards north to the length of 58 links over the old rubble basement by removing the old compound wall made of bricks. At that time, the plaintiff obstructed the defendant to make construction over that. Hence the defendant approached the Tashildar, Kalkulam to demarcate and put up boundary therein. On that application, Thiruvithancode Firka Surveyor, after giving notice to the plaintiff, inspected the spot and tried to measure the property. At that time, the plaintiff along with some coolies prevented the Surveyor to measure the property and used vulgar words towards the defendant on 15.06.2001. Hence, the Surveyor had not proceeded to work and went away.

(v) Subsequently, the defendant submitted a petition to the Collector, Kanyakumari District and sent petitions through registered post to the Collector and others stated in the application and also submitted a copy of that complaint to the Inspector, Eraniel Police Station and got petition Receipt No. 490/2011 dated 21.07.2011. The Inspector of Police made enquiry and directed to measure the property and demarcate and put up boundary after getting direction from Revenue Divisional Officer Padmanabhapuram on the written consent of the plaintiff. Hence the defendant approached the R.D.O. Padmanabhapuram and the R.D.O. Directed the Firka Surveyor to measure and demarcate the disputed property. The Firka Survey never turned up. Hence, the defendant again approached the R.D.O. Hence the R.D.O. ordered the Taluk Inspector of Survey to settle the dispute. In the mean time, the plaintiff approached this Honourable Court on 02.08.2011 and filed this false case against the defendant.



(vi) There is no plaint A schedule and C schedule property in the spot. The plaintiff has no right over R.S.No.481/21 of Eraniel Village except one cent on north western side. The case of the plaintiff is not maintainable in law and on facts. There is no C schedule property. The defendant never illegally occupied C schedule property. The property described in 'C' schedule is in R.S.No.481/21 of Eraniel Village and it belongs to the defendant. The defendant never demolished the compound wall but it is the plaintiff, who had not only pulled it down but also demolished the western wall of the defendant's house and caused heavy loss to the defendant. The old basement and the old compound wall on that basement belongs to the defendant and it is in R.S.No.481/21 of Eraniel Village. The defendant never demolished any compound wall and never encroached the plaint C schedule property and the question of encroachment never arises in this case because the property in C schedule belongs to the defendant. The defendant already constructed compound wall by cement brick upto 98 links from south to north on the western boundary line in R.S.No.481/21 of Eraniel Village. Hence, there is no question of attempt by defendant to make construction on that portion.

(vii) The plaintiff has no case to create any title over R.S.No.481/21 of Eraniel Village and if so, he has to get declaration over the R.S.No.481/21 for the description stated in the plaint because he has no right over that property. Otherwise, the suit is not maintainable in law. The plaintiff is not entitled to get any relief on the basis of the void document. The plaintiff is entitled to get the property only in R.S.No.481/22 of Eraniel Village with one cent only in R.S.No.481/21 of Eraniel Village on the north western side.

(viii) The suit is under value and it is not maintainable. Thus, the defendant had denied the title of the plaintiff in respect of R.S.No.481/21 of Eraniel Village and he had also filed counter claim in respect of the suit property.

4. The Trial Court framed issues and the case was posted for trial and the plaintiff was examined in chief and he was also cross-examined in part. At that stage, the plaintiff had come out with the application under Order VI Rule 17 C.P.C seeking to amend the plaint stating that the suit happened to be filed in haste and hence certain omissions and corrections are required to be done in the plaint by way of amendment.

5. The respondent had filed a counter stating that the allegations are totally false and that the defendant had filed written statement and the counter claim and the Commissioner had visited the suit schedule property and also filed a Report.



5.i) It is further averred in the counter that the suit being of the year 2011, it was posted in the list long back and that after 3 years, i.e in the year 2014, the petition seeking for amendments was filed by changing the counsel. Further, the petition was filed after evidence of the plaintiff was over and it is filed only against the admission in the plaint as well as in the evidence. It is further contended that there is no documentary evidence on the side of the plaintiff to support the amendment sought for in paragraph-2 of the plaint. Further, the plaintiff, being the master of the litigation, has to prove his case and that the plaintiff had attempted to stand on the shoes of the defendant.

6. The Trial Court, after perusing the documents putforth before it and after hearing the counsel on both sides, had passed a detailed order. The Trial Court, finding that the petition for amendment has been filed belatedly and the proviso under Order VI Rule 17 C.P.C has not been satisfied, had dismissed the petition, against which, the present revision has been filed by the petitioner/plaintiff.

7. The learned counsel appearing on behalf of the petitioner would submit that only because the petition has been filed belatedly, it cannot be refused. In this case, a mistake has been committed by the earlier counsel appearing for the petitioner/plaintiff before the Trial Court. According to the learned counsel for the petitioner/plaintiff, for deciding the rival controversy between the parties in the suit, the plaint has to be amended. Therefore, the delay in making the application for amendment cannot be a ground to refuse it.

8. In support of his contention, the learned counsel would rely on the judgments of the Apex Court in **Baldev Singh & Others Etc., Vs. Manohar Singh & Another. Etc.** reported in 2008 SAR (Civil) 658 and in **Surendra Kumar Sharma Vs. Makhan Singh** reported in 2009 SAR (Civil) 967. He would rely on the judgment of this Court in **Thavittu Ponnu Vs. Devaki Ammal and 2 others** reported in 2012(2) MWN (Civil)113. The learned counsel would further submit that by allowing the amendment, no prejudice would be caused to the defendant.

9. In **Baldev Singh & Others Etc., Vs. Manohar Singh & Another. Etc.** reported in 2008 SAR (Civil) 658, it has been held by the Apex Court that merely delay of three years in filing the application for amendment of written statement could not be a ground for rejection of the same when no serious prejudice is shown to have been caused to the plaintiff and the plea of limitation can be allowed to be raised as an additional evidence.



10. In yet another case in **Surendra Kumar Sharma Vs. Makhan Singh** reported in **2009 SAR (Civil) 967**, the Apex Court has held that mere delay in making the application for amendment cannot be ground to refuse the amendment.

11. In **Thavittu Ponnu Vs. Devaki Ammal and 2 others** reported in **2012(2) MWN (Civil)113** a learned Judge of this court has held that an application filed to amend the boundaries and extent of suit property filed before completion of trial when the amendment was not to cause prejudice to either parties and neither changes the character of the suit nor affects vested right accrued to either party and the amendment seeks to determine the real question of controversy between the parties, it shall be permitted to be made.

12. Per contra, the learned counsel for the respondent would submit that the respondent/defendant has purchased the property as early as in the year 1986 much early to the purchase of the property by the predecessor in title to the suit property. The plaintiff, knowing very well that the property of them lies in Survey No.481/22, had filed the plaint claiming that his property lies even in Survey No.481/21 and that the sale deed also shows that the property lies in Survey No.481/21. He would also submit that the respondent has filed written statement and also counter claim that he is in enjoyment of 6 ½ cents of property in 'B' schedule property in Survey No. 481/21 and Issues were framed and the case was posted for trial and the petitioner was examined in chief and he was cross-examined by the defendant and that stage also, the petitioner had admitted to the effect that the respondent was in possession of 6 ½ cents of land in Survey No.481/21, but, later, he had taken a 'U' turn stating that the survey number referring to the property is in survey No.481/22 and the plaint 'B' schedule property lies as stated in the defendant's document and that the defendant had got title only for 4 cents and was in possession to that extent only and Further the plaintiff had also sought to correct the Survey Number as 481/22 instead of 481/21. Even in the petition filed by the petitioner/plaintiff, no reason has been adduced for explaining the delay and no reason has been stated to satisfy with the proviso to Order VI Rule 17 C.P.C C.P.C that in spite of due diligence, the plaintiff could not have raised the matter before the commencement of trial. The trial court has rightly found that the petition has been belatedly filed and that the petitioner/plaintiff had attempted to introduce a new case and new cause of action and has rightly dismissed the Application.

13. In support of his contention, the learned counsel for the respondent would rely upon the following judgments of the Apex



- i) 2016(1) SCC 332 (L.C.Hanumanthappa Vs. H.B.Shivakumar)
- ii) 2019 (5) SCC 360 (Vijay Hathising Shah and another Vs. Gitaben Parshottamdaas Mukhi and others)
- iii) 2019 (2) SCC 409 (Vidyabai Vs. Padmalatha)
- iv) 2019(4) SCC 332 (M.Revanna Vs. Anjanama (Dead) by Legal representatives and others).

14. In L.C. Hanumanthappa Vs. H.B.Shivakumar reported in (2016(1) SCC 332) it has been held as follows:

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 plaintiffs 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 plaintiffs 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 plaintiffs 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.

15. This Court has followed the abovesaid judgment in C.R.P (MD) No.1363 of 2017 dated 15.07.2021 (Vijayakumar v. Sumathi and others) and has held as under:

The proviso to Order VI Rule 17 of the CPC virtually

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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.

16. In Vidyabai & Ors. v. Padmalatha & Anr. [(2009) 2 SCC 409], the Supreme Court of India 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 courts 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. 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.

17. In M.Revenna Vs. Anjanamma (Dead) By legal representatives and others reported in 2019(4) SCC 332 it has been held as follows:

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.

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.

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.

18. I have heard the learned counsel appearing on either side and perused the materials available on record.

19. In this case, the petitioner has filed the suit for the aforesaid prayers on 02.08.2011 and within a month, the respondent had filed written statement and within one month thereafter, on 10.10.2011, the respondent also filed a counter claim. Thereafter, the Trial Court had framed the issues. The case has been taken for trial. The petitioner/plaintiff was examined in chief and he has also been cross-examined in part. At that stage, after lapse of 3



years, an Application has been filed seeking amendment of Plaintiff. As contemplated in proviso to Order VI Rule 17 C.P.C, the petitioner has to prove that despite his due diligence, he could not have raised the matter before commencement of trial. A perusal of the petition shows that the petitioner/plaintiff has not averred in his petition anything to the effect that despite his due diligence, he could not raise the matter before commencement of trial.

20. Order VI Rule 17 C.P.C reads as follows:

17. Amendment of pleadings - The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be 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 trial.

21. In this case, it is also seen that trial has already commenced and it has reached the stage of examination of witnesses and it is in the middle of cross examination. The respondent has not only filed written statement but also filed a counter claim on 10.10.2011 itself. The plaintiff had preferred an Application seeking amendment belatedly. It also appears that the nature of amendment sought for would change the character of the suit claim. Further, the appellant/plaintiff has also not established that in spite of due diligence, he was not able to seek for the amendment in time. Therefore, the Trial Court has rightly dismissed the application seeking amendment. I do not find any infirmity in the order passed by the trial court.

22. At this juncture, the learned counsel for the petitioner would submit that the petitioner/plaintiff would not be let to suffer for the mistake committed by his earlier counsel. He would also submit that since the petitioner had not been properly advised, he had not filed any written statement for the counter claim. Therefore, he would pray that the delay in filing written statement in the counter claim may be condoned and the petitioner may be permitted to file a written statement to the counter claim and the Trial Court may be directed to raise additional issues within a specified time as stipulated by this Court and that the petitioner may be permitted to let any further evidence with regard to the same.



23. Visualising the plaintiff's position in the event of dismissal of this revision, this Court intends to accede the said request made by the learned counsel for the petitioner. If this Court does not grant such a relief, the position of the petitioner/plaintiff in the suit would be an embarrassing one. Hence, the petitioner/plaintiff is permitted to file a written statement to the counter claim and thereafter, the Trial Court shall raise additional issues within a period of three weeks from the date of filing of written statement. The trial process shall continue thereafter.

24. Subject to the above observation, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (P&A)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

CM/ssk.

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To,

1. The Additional District Munsif Court, Eraniel

2. The VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.K.SREEKUMARAN NAIR, Advocate (SR-28975[F] dated 14/09/2021)

+1 CC to M/s.V.M.BALAMOZHANTHAMBIL, Advocate (SR-28997[F] dated 14/09/2021)

**C.R.P. (MD) No.1671 of 2014
and M.P (MD) No.1 of 2014
13.09.2021**

RK/UV (08/11/2021) 12P 6C