



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.10.2021

CORAM

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

C.R.P(PD) (MD) No. 2329 of 2014

and

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

WEB COPY

1. R.Veerasivakumar
2. Porselvi
3. Shanthi
4. Manavalan
5. Subha
6. Vijayakumar
7. Subbulakshmi
8. Pandi
9. Ravikumar

...Petitioners

Vs.

1. Jegatheesan
2. Jegathambal
3. Jegatheeswari
4. Jeyapal
5. Krishnan
6. Raja
7. Paunraj
8. Chellapandi
9. Subburam Reddiar
10. Annamalai
11. Natchar
12. Aavudai Eswari
13. Rajapandi
14. Sivasubramanian
- 15.Pandi

...Respondents

R4 and R15 remained exparte

PRAYER : Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, to set aside the order dated 27.08.2014 made in I.A.No.703 of 2014 in O.S.No. 353 of 2007 on the file of the District Munsif Court, Thirumangalam.

For Petitioners : Mr.PT.S. Narendravasan

For Respondents :

R1 to R3 and R15 : Mr.M.Sudalaiyandi
for Mr.N.Vallinayagam
R7 : Mr.R.G.Sankar Ganesh
R5,6,8,9,11 to 14 : Mr.S.Vellaichamy
R10 : No appearance
R4 : Dispensed with



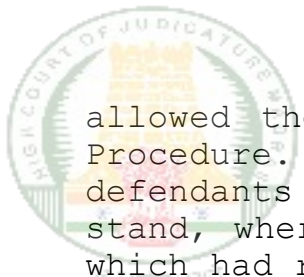
O R D E R

This petition has been filed seeking to set aside the order passed by the learned Trial Judge in I.A.No.703 of 2014 in O.S.No. 353 of 2007 on the file of the District Munsif Court, Thirumangalam permitting the plaintiffs to amend the plaint.

2. The respondents/plaintiffs have filed the suit in O.S.No.353 of 2007 against defendants 1 to 12 for the relief of permanent injunction and mandatory injunction. It is the case of the plaintiffs that during the pendency of the suit, the first defendant had illegally created certain documents in collusion with one K. Ayyadurai and P.Rajendran and on the basis of the same, defendants 13 to 21 created registered sale deeds in their favour. It is the further case of the plaintiffs that the defendants 13 to 21 on the basis of fraudulent and vicious documents attempted to encroach over suit properties and proclaim to raise construction thereon. The respondents/ plaintiffs had filed application to implead petitioners/ defendants 13 to 21 in the suit to get a binding decree and the same was allowed by the Trial Court on 28.09.2010. Thereafter the plaintiffs had filed amendment application in I.A.No. 1420 of 2010 and the same was allowed on 02.11.2010. It is the further case of the plaintiffs that in the prayer column in respect of the relief against defendants 13 to 21, a mistake had crept in and thereby a petition for seeking amendment of pleading was filed under Order 6 Rule 17 of the Code of Civil Procedure. The petitioners/defendants had objected the amendment of pleading, however the Trial Court by order dated 27.08.2014, has allowed the petition against which the present revision has been filed.

3. The sum and substance of the submission made by the learned counsel for petitioners/defendants 13 to 21 is as under:

The suit was filed during July 2007. Initially the petitioners were not impleaded as defendants in the suit, thereafter the plaintiffs had filed a petition to implead the petitioners and the petitioners were impleaded in the year 2010. Thereafter the petitioners have filed a written statement on 21.06.2011. Meanwhile subsequently several petitions seeking amendment were filed and allowed by the Trial Court. Thereafter the Trial Court framed issues and the case was taken up for trial. PW 1 was examined in chief and cross examined in part. During cross examination PW1 has also deposed that there is no need for relief against the present petitioners namely defendants 13 to 21. Whiles, in contravention to proviso to Order 6 Rule 17 the plaintiffs without there being any pleading in respect of due diligence have filed application seeking for amendment of plaint. The trial Court without taking into consideration that the application for amendment was filed after the commencement of trial and without taking into consideration that no reason had been stated regarding exercise of due diligence had



allowed the petition in total contravention of the Code of Civil Procedure. Having admitted that no relief was sought for against defendants 13 to 21, the plaintiff cannot be allowed to take such stand, whereas the Trial Court has erroneously allowed the petition which had resulted in travesty of justice. The Trial Court has not considered the aspect of due diligence while allowing the Application and thereby the revision may be allowed by setting aside the order passed by the Trial Court.

4. The learned counsel for the respondents would submit that by allowing the application for amendment no prejudice would be caused to the petitioners and the nature of the suit will not be altered. He would further submit that Trial Court taking into consideration that by allowing such application multiplicity of proceedings could be avoided had rightly passed the order thereby he seeks dismissal of the petition.

5. Heard the learned counsel appearing on either side and perused the materials available on record.

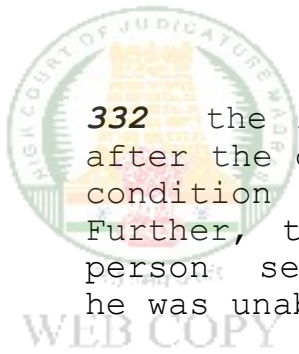
6. It is apposite to refer to Order 6 Rule 17, which reads as under:

" The Court 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."

7. In this case, the suit has been filed during July 2007 subsequently on an application filed by the plaintiffs, defendants 13 to 21 were impleaded as defendants 13 to 21 by order dated 28.09.2010. Thereafter the petitioners have filed written statement on 28.06.2011. Subsequently the Trial Court has framed issues and trial had commenced. PW 1 was examined in chief and during his cross examination he had deposed that he had not sought any relief as against the defendants 13 to 21 and the defendants 13 to 21 were impleaded only in order to get a binding decree against them.

8. Admittedly in this case petition seeking amendment of plaint has been filed after commencement of trial. Proviso to Order 6 Rule 17 stated that no application for amendment shall be allowed after trial is commenced unless the Court comes to conclusion that in spite of due diligence the party could not have raised the matter before the commencement of trial. In **M.Revanna .vs. Anjanamma (Dead) by legal Representative and others** reported in **(2019) 4 SCC**



332 the Hon'ble Apex Court has held that amendment of pleadings after the commencement of trial is not permissible itself under the condition stated in the proviso to Order 6 Rule 17 is satisfied. Further, the apex Court has also held that the burden is on the person seeking amendment to show that inspite of due diligence he was unable to raise the matter before the commencement of trial.

9. Further in **Pandit Malhari Mahale .vs. Monika Pandit Mahale and others** reported in **(2020) 11 SCC 549**, the Hon'ble Apex Court has held that the Trial Court is bound to arrive at a conclusion and render a finding that inspite of due diligence the party could not have raised the matter before the commencement of trial.

10. A perusal of the impugned order shows that nothing has been stated in the impugned order with regard to the Court being satisfied that despite due diligence the party could not have raised the matter before the commencement of trial . When there is no finding, the impugned order suffers from error and infirmity.

11. In view of the same, the Revision Stands allowed and the order passed by the learned District Munsif, Thirumangalam in I.A.No.703 of 2014 is set aside. No costs. Consequently the connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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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

The District Munsif Court, Thirumangalam.

+1 CC to M/s.PT.S.NARENDRAVASAN, Advocate (SR-31244[F] dated 05/10/2021)

C.R.P (PD) (MD) No. 2329 of 2014 and
M..P(MD) No.1 of 2014

05.10.2021

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