



C.R.P.(PD)No.714 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.07.2022

CORAM :

THE HONOURABLE MS. JUSTICE R.N.MANJULA

C.R.P.(PD)No.714 of 2022

and

C.M.P.No.3596 of 2022

1.N.Balasubramanian
2.P.Babu

... Petitioners

..Vs..

1.Thangammal
2.K.P.Paramasivam
3.K.P.Ramesh
4.T.M.Seeranga Gounder
5.Thangavelu
6.Deivanai
7.Saraswathi
8.Duraisamy
9.Sriram
10.M/s.K.P.R.Mills Limited
by its Managing Director
270-J, Periyar Colony,
Anuparpalayam,
Tiruppur – 15
11.Thangamani
12.K.Ramalingam
13.R.Anand

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14.R.Sukumar

15.Priya

16.T.Savinkumar

... Respondents

Prayer :- Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and final order dated 20.04.2021 made in I.A.No.214 of 2018 in O.S.No.232 of 2013 on the file of the I Additional District Court, Erode and allow the Civil Revision Petition.

For Petitioner : Mr.V.Rajesh

For Respondents : Mr.C.Subramaniam
for R1 to R3
Mr.V.Sivakumar
for R10
RR 4 to 9, 11 to 16 - Exparte

ORDER

This Civil Revision Petition has been preferred challenging the fair and final order dated 20.04.2021 made in I.A.No.214 of 2018 in O.S.No.232 of 2013 on the file of the I Additional District Court, Erode.

2. The revision petitioners are the plaintiffs who have filed the suit in O.S.No.232 of 2013 against the defendants to set aside the earlier decree passed in O.S.No.621 of 1991 as null and void and also for partition. During

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the pendency of the suit, the plaintiffs filed an Interlocutory Application in I.A.No.214 of 2018 to amend the plaint schedule property and the same was dismissed. Aggrieved over the same, the plaintiffs have filed the present revision petition.

3. The learned counsel for the revision petitioners/plaintiffs submitted that the learned trial Judge had chosen to dismiss the application only because, the delay caused in amending the plaint; and by way of amendment, the plaintiffs had attempted to get over the weakness of the evidence of P.W.1, who had already been cross examined; it is further submitted that the learned trial Judge having observed that the amendment will not change the character of the suit, ought to have allowed the amendment; further the amendment will not cause any prejudice to the case of the defendants; and by way of amendment the petitioners only try to give perfect particulars of the property and the defects of which has been pointed out by the 10th defendant himself in his written statement.



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4. The learned counsel for the respondents/defendants submitted that the written statement was filed as early as on 21.07.2014 and the petitioners have knowledge of the same; despite that, they failed to exercise due diligence; hence, they are barred to make an amendment in view of the exclusion contemplated under the proviso to Order VI Rule 17 C.P.C. The further contention of the learned counsel for the respondents is that by way of introducing the amendment, the plaintiffs only tries to get over the admissions given during the cross examination.

5. In support of his contention the learned counsel for the respondents also cited the decisions in *M.Revanna Vs. Anjanamma (Dead) by her L.R's and others* reported in [2019(2) CTC 474] and *Anthonyysamy Vs. Christoraj and Leela Mary* reported in [2013(4) CTC 443].

6. It is needless to say that the plaintiffs cannot be allowed to amend the plaint, if the amendment changes the very cause of action and the character of the suit. But, the petitioners herein have only sought to rectify the defective or the confusing particulars of the property, which has been pointed out by the contesting respondent/10th defendant in his written



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statement. It is true that the written statement was filed in the year 2014 itself and the plaintiffs ought to have taken steps to amend the particulars of the property at least thereafter. The plaintiffs seems to have got the alert only after the cross examination of P.W.1, to whom the questions about the description of the property was made.

7. Admittedly, the suit has been filed to set aside the earlier decree in O.S.No.621 of 1991 as null and void and also for partition. So, the scope of success for the respective parties would only rest on their ability to prove the title in respect of the share claimed in the suit. If the description of the property is not properly given, at the end of the trial, even if the entitlement of the plaintiffs are determined, there may be difficulty in executing the decree or passing of the final decree. Even though, P.W.1 was cross examined, the amendment sought for will not alter the character of the suit or the cause of action. The learned trial Judge has also made an observation to that effect. Though it is correct to state that the plaintiffs ought to have exercised due diligence and should have not taken the chance to amend the plaint at the fag end, the omission on the part of the plaintiffs would cause



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greater damage to the entire proceedings. Allowing the amendment does not cause any prejudice to the case of the 10th defendant. The Courts can show a little indulgence by allowing the application for amendment on terms. This is because of the fact that the plaintiffs did not come forward to amend the plaint, immediately after seeing the written statement and was waiting until the trial is opened.

8. There is no quarrel on the dictum laid down by the Courts in the citations cited by the learned counsel for the respondents. But the facts remains that this particulars of amendment is not going to cause any travesty of justice or prejudice to the respective parties, at the risk of repetition, it is made clear that the parties needs to succeed and to prove their entitlement only on the basis of the their respective title through the relevant materials supporting their title. Hence, I feel a pragmatic view should be taken. Considering the larger interest of both the parties and to avoid future technical difficulties that might creep while executing the decree, if any. Hence, the order of the learned trial Judge is liable to be set aside and this revision petition should be allowed on condition that the petitioners/plaintiffs



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should pay cost.

8. In the result, this Civil Revision Petition is allowed and the order dated 20.04.2021 passed in I.A.No.214 of 2018 in O.S.No.232 of 2013 by the learned I Additional District Judge, Erode is set aside and I.A.No.214 of 2018 is allowed on payment of costs of Rs.5,000/- (Rupees Five Thousand) to the 10th defendant within a period of ten days from the date of receipt of a copy of this order, failing which, the petition will stand automatically dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index:Yes No
Speaking Order:Yes/No
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R.N.MANJULA, J.

ms

To

The I Additional District Judge,
Erode.

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and
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