



Civil Revision Petition(PD)No.1233 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.04.2022

CORAM :
THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Civil Revision Petition(PD)No.1233 of 2016

R.Subhashini

... Petitioner

Vs.

A.Venkateswarlu @ A.Venkatesh

... Respondent

This Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the fair and decreetal order dated 19.11.2015 made in I.A.No.10780 of 2015 in O.S.No.2640 of 2011 (Joint Trial along with O.S.No.5263 of 2011) on the file of the learned VI Assistant City Civil Judge, Chennai.

For Petitioner : Mr.A.Chidambaram

For Respondent : Mr.R.Dasaratha Rao

ORDER

This Civil Revision Petition has been filed by the petitioner challenging the fair and decreetal order passed by the learned VI Assistant



City Civil Court, Chennai in I.A.No.10780 of 2015 in O.S.No.2640 of 2011
(Joint Trial along with O.S.No.5263 of 2011) dated 19.11.2015, dismissing
the Interlocutory Application for amendment.

2. The learned counsel for the petitioner submitted that revision petitioner/plaintiff and the respondent/defendant are brother and sister. The revision petitioner/plaintiff has filed the suit in O.S.No.2640 of 2011 against the respondent/defendant for the following relief:

1) For a permanent injunction restraining the respondent/defendant, his agents, servants or anybody claiming through or under him from in any manner interfering with her peaceful possession and enjoyment of the suit schedule B and D property either by putting up any construction blocking the common enjoyment or in any other manner whatsoever.

2) For mandatory injunction directing the respondent/defendant herein to remove the unauthorized superstructure put up by him in the open terrace (Schedule D) within the time frame to be fixed by this Hon'ble Court, failing which permit the plaintiff to remove the same at the cost of the respondent/defendant.

After the filing of the suit, on 15.06.2011, the respondent/defendant



has filed his written statement, denying the averments made by the revision petitioner/plaintiff in the plaint.

2.1. Subsequently, the respondent/defendant filed a suit in O.S.No.5263 of 2011 against the revision petitioner/plaintiff before the VI Assistant City Civil Court, Chennai for the following reliefs:

(a) for a permanent injunction restraining the revision petitioner/plaintiff, her agents, servants or anybody claiming through or under him from in any manner interfering with the possession and peace full enjoyment of the Suit-C Schedule property viz., the bathroom in the open terrace by way of using or demolishing or in any other manner whatsoever.

(b) For Mandatory Injunction directing the revision petitioner/plaintiff to remove the unauthorized putting up the Bore well in the Common Passage and putting up a overhead tank in the open terrace in the Suit-D schedule property within the time fixed by this Hon'ble Court, failing which to permit the respondent/defendant to remove the same at the cost of the revision petitioner/plaintiff.

After the filing of the suit, the revision petitioner/plaintiff has filed her written statement in O.S.No.5263 of 2011 in the month of January 2012.



2.2. While both the suits are pending, the revision petitioner/plaintiff has filed an Interlocutory Application in I.A.No.10780 of 2015 under Order VI Rule 19 r/w. Section 151 of C.P.C., seeking to amend the plaint in O.S.No.2640 of 2011 in para 8(1) by deleting the words “D Property after Schedule B” and include the words “Open Terrace”.

3. The learned counsel for the petitioner further submitted that the issues involved in both the case and the subject matter are one and the same and the Hon'ble Trial Court has already passed an order for joint trial and accordingly, evidence on both sides were recorded and now, the case is in argument stage. The main dispute in the above suits is with regard to the lavatory and bathroom, which was unauthorizedly constructed by the respondent/defendant against the contents of the settlement deed and the same has been marked as Ex.A1 and Ex.B1. Therefore, the revision petitioner/plaintiff seeking a relief for removal of the same by way of mandatory injunction.

4. The learned counsel further contended that in this suit, the portion allotted to the revision petitioner/plaintiff has been shown as 'B' Schedule in



the plaintiff and the lavatory and bathroom constructed by the respondent/defendant has been shown as 'D' Schedule in the plaint. Further, the prayer in the suit in O.S.No.2640 of 2011 for permanent injunction , it has been stated that the respondent/defendant should not in any way disturb the peaceful possession and enjoyment of the suit schedule B and D property, but due to inadvertance and by mistake, it has been wrongly stated as “B Schedule and D Schedule” instead of stating as “B Schedule and open terrace”. Therefore, the Schedule 'D' property has been described as open terrace and it is obvious that only by way of inadvertent and by mistake, the plaint has been wrongly drafted as 'B' and 'D' Schedule property.

5. The learned counsel for the petitioner further contended that the above said defects have come to light only now when the lower Court counsel was preparing for arguments in the above case and immediately on the first argument date itself viz., on 20.07.2015, the said mistake was brought to the notice of the Trial Court and now, if the mistake is not corrected in the records, the defect will continue in the records by creating unnecessary confusion and complication in future. Hence, it is only a bonafide mistake due to inadvertence and also in view of the fact that the



respondent/defendant has also filed the connected suit in O.S.NO.5263 of 2011, praying for permanent injunction of the same property. The entire dispute is with regard to the usage of common trace and construction of bathroom and lavatory by the respondent/defendant. In regard to the above issue, the relevant clause in the Settlement Deed dated 30.03.2005 are extracted hereunder:

“5. The SETTLEES or their representatives or heirs shall have the right of approach to their respective portions more fully described in 'B' and 'C' Schedules hereunder through the portion coloured 'YELLOW' in the sketch attached hereto in common and neither of the SETTLEES are entitled to object or obstruct the other SETTLEE.

6. The SETTLEES shall not put up any superstructure or shed on the open terrace.”

6. The learned counsel for the petitioner relied on the judgment of the Hon'ble Apex Court in the case of Rajesh Kumar Aggarwal and others Vs. K.K.Modi and others, reported in AIR 2006 Supreme Court 1647. For better appreciation, the relevant portion of the judgment is extracted hereunder:

“ The object of the rule is that Courts should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties



provided it does not cause injustice or prejudice to the other side. Order 6 Rule 17 consist of two parts whereas the first part is discretionary (may) and leaves it to the Court to order amendment of pleading. The second part is imperative (shall) and enjoins the Court to allow all amendments which are necessary for the purpose of determining the real question in controversy between the parties”.

“ While considering whether an application for amendment should or should not be allowed, the Court should not go into the correctness of falsity of the case in the amendment. Likewise, it should not record a finding on the merits of the amendment and the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer for amendment”.

6.1. The learned counsel further relied on the judgment of the Hon'ble Apex Court in the case of Surendar Kumar Sharma Vs. Makhan Singh, reported in (2009) 10 SCC 626, has stated that

“the belated application for amendment of the plaint cannot be refused, if it is found that for deciding the real controversy between the parties, it can be allowed on payment of costs”.

6.2. The learned counsel for the petitioner also placed a reliance on the judgment of the Hon'ble Supreme Court in the case of Usha Devi Vs. Rijwan



Ahmad and others, reported in AIR 2008 Supreme Court 1147. For better appreciation the relevant paragraph is extracted hereunder:

“It is true that the plaintiff-appellant ought to have been diligent in promptly seeking the amendment in the plaint at an early stage of the suit, more so when the error on the part of the plaintiff was pointed out by the defendant in the written statement itself. Still, we are of the opinion that the proposed amendment was necessary for the purpose of bringing to the fore the real question in controversy between the parties and the refusal to permit the amendment would create needless complications at the stage of the execution in the event of the plaintiff-appellant succeeding in the suit”.

6.3. The learned counsel for the petitioner further placed his reliance on the judgment of the Hon'ble Supreme Court in the case of Varun Pahwa Vs. Mrs.Renu Chaudhary. For better appreciation, the relevant paragraphs are extracted hereunder:

“ 8. The plaint is not properly drafted in as much as in the memo of parties, the Plaintiff is described as Varun Pahwa through Director of Siddharth Garments Pvt. Ltd. though it should have been Siddharth Garments Pvt. Ltd. through its Director Varun Pahwa”.

“11. Thus, we find that it was an inadvertent mistake in the plaint which trial court should have allowed to be corrected so as to permit the private Limited Company to sue as Plaintiff



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Civil Revision Petition(PD)No.1233 of 2016

as the original Plaintiff has filed suit as Director of the said Private Limited Company. Therefore, the order declining to correct the memo of parties cannot be said to be justified in law”.

7. The learned counsel appearing for the respondent submitted that the application seeking for an order of amendment of the prayer in the suit in O.S.No.2640 of 2011 in para 8 (1) by deleting the words 'D' property after schedule 'B' and by including the words “open terrace” has been filed before the commencement of the trial and in this case, the trial has already been commenced. In the event of amending the plaint by including the word “open terrace”, the schedule has totally changes the entirety of the case and the same is not the subject matter of the suit and further at the fag end of the suit only the revision petitioner/plaintiff filed this amendment application.

7.1. The entirety of the act of amendment will defeat the absolute right, claim and interest of the respondent/defendant in respect of specified area of open terrace settled in favour of the respondent/defendant in terms of the Settlement Deed dated 30.03.2005 which has been marked as Exhibit A1 and



B1. The amendment at the fag end of the suit by changing the schedule of the property to suit the convenience of the revision petitioner/plaintiff introduces a new case and the respondent/defendant will be put to an immense prejudice hardship and sufferings on account of the amendment. The aforesaid amendment changes the very ambit of the suit.

8. The learned counsel for the respondent further submitted that the amendment introduces a new case by including extent of property which is not the subject matter of the suit, where the same is only constituting the absolute property of the respondent/defendant. Moreover, there is no bonafide or inadvertence by the revision petitioner/plaintiff and the revision petitioner/plaintiff has come forward with the amendment application to rectify the same is untenable. The inclusion of the property in the schedule by way of amendment cannot be claimed by the revision petitioner/plaintiff and the amendment is not on account of any bonafide mistake or inadvertence but it is only with an intention to engulf the property, which the revision petitioner/plaintiff is not entitled.

9. The learned counsel for the respondent has relied on the judgment of



the Hon'ble Apex Court in the case of State of Madhya Pradesh Vs. Union of India and another, reported in (2011) 12 Supreme Court Cases 268. For better appreciation the relevant passage is extracted hereunder:

“Civil Procedure Code, 1908, Order VI Rule 17 and proviso – amendment when not permissible – Amendment that would render suit infructuous – Amendment that would introduce a totally different, new and inconsistent case or challenges fundamental character of the suit – Amendment sought after delay of five years and issues already framed – relief sought by virtue of amendment was not relief that could be granted in suit concerned – Amendment denied.

9.1. The learned counsel further made his reliance on the following judgment of this Court:

(1) In the case of Minor Balakumaran, through his natural guardian, next friend and father, Gnanasoundiran Vs. Gunasekaran, reported in 2012

(5) CTC 37, it has been held that:

“Code of Civil Procedure, 1908 (5 of 1908), proviso to Order Vi, Rule 17 – Suit for declaration filed – Plaintiff sought to add a relief of recovery of possession – petition dismissed – Revision filed – amendment application was filed after trial – petitioner has not made out a case that in spite of his diligence he could not file application before trial – ingredients of proviso to order VI, Rule 17, not satisfied – Held, Application rightly dismissed”.



(2) In the case of J.R.Arun Kumar and others Vs. K.Boopalan, reported in 2012 (3) MWN (Civil) 749, it has been held that:

“In instant case, issue sought to be addressed by Plaintiffs in Amendment Application already brought to their notice in Written Statement filed by Defendants – Thus, vital ingredient of due diligence lacking on part of Plaintiff and allowing of Application by Trial Court, thus, erroneous – Order of Trial Court set aside – Civil Revision Petition allowed”.

(3) In the case of P.Subba Naicker Vs. Veluchamy Naicker and three others, reported in 2004 (2) CTC 742, it has been held that:

“3. Though it is contended that the proposed amendment in the plaint will not alter the cause of action or introduce a new plea, as rightly objected by the respondents, the petitioner cannot be allowed to claim both ownership and a right of easement. This aspect was rightly considered and rejected by the learned District Munsif. I am in agreement with the said conclusion and there is no ground for interference”.

10. The learned counsel for the respondent contended that the revision petitioner/plaintiff is not entitled for “open terrace” exclusively, it has to be used by both the parties as per the Settlement Deed. The sketch appended to



the Settlement Deed in Document No.707 of 2005 dated 30.03.2005 clearly shows that the portions allotted to the revision petitioner/plaintiff and the respondent/defendant are shaded in green and red colour and the common passage has been marked in yellow colour respectively. Therefore, the filing of the amendment application is nothing but abuse of process of law by the revision petitioner/plaintiff and that too at the fag end of the suit, which is in the argument stage and the revision petitioner/plaintiff is trying to introduce a new case. Moreover, the filing of the amendment application by the revision petitioner/plaintiff is only an attempt to patching up the latches in the suit and nothing else. The revision petitioner/plaintiff's right is restricted only in respect of portion of the open terrace which is shaded in green colour.

11. Heard the learned counsel for the petitioner and the learned counsel for the respondent and perused the material documents available on record.

12. The suit in O.S.No.2640 of 2011 was filed by the revision petitioner/plaintiff in the month of March 2011 and the respondent/defendant filed his written statement on 15.06.2011, but the Interlocutory Application in I.A.No.10780 of 2015 for amending the prayer portion of the plaint was



filed by the revision petitioner/plaintiff only on 23.07.2015 which is after a delay of more than four years. It is an admitted fact that the trial has been completed in the suit and the argument has been commenced on behalf of the parties. At this juncture, the revision petitioner/plaintiff has come out with an application to amend the plaint and there is no valid, proper, genuine or bonafide reason adduced by the revision petitioner/plaintiff for filing the above Interlocutory Application in I.A.No.10780 of 2015. This apart, the intention of the revision petitioner/plaintiff is only to introduces a new case by way of filing the aforesaid I.A.No.10780 of 2015 in O.S.No.2640 of 2011.

13. It is an well settled law that no application for amendment can be entertained after the commencement of the trial and in this case, the trial has already completed and the argument has also been commenced. The reason given by the revision petitioner/plaintiff for inordinate delay of filing the application is that she came to know about the defects in the prayer only when the counsel was preparing for an argument and the same was brought to the notice of the trial court i.e., on 20.07.2015 and the same is not sustainable. If it is really a case of mistake of inadvertence on the part of the revision petition/plaintiff, she could have taken the step immediately after filing of the suit in the year 2011 but having failed to do so, she could not



come out with the present application after an inordinate delay of four years.

Further, the filing of the application is only to introduces a new case for the reason .

14. According to Clause 5 & 6 of the Settlement Deed dated 30.03.2005, the revision petitioner/plaintiff and respondent/defendant are the legal heirs and they have the right of approach to their respective portions more fully described in 'B' and 'C' Schedules, the portion coloured 'yellow' in the sketch attached with the settlement deed is common and neither of the settlees are entitled to object or obstruct the other settlee. Further, the settlees shall not put up any superstructure or shed on the open terrace. In the present case, the revision petitioner/plaintiff has already put up an water tank in the portion which has been marked in 'yellow' colour. The schedule 'D' property, the bathroom and lavatory measuring to an extent of 120 sq.ft in the open terrace area marked in 'red' colour, in which the revision petitioner/plaintiff has asked for a relief of mandatory injunction, directing the respondent/defendant herein to remove the unauthorized superstructure put up by him in the open terrace (schedule D) within the time frame to be fixed by the trial Court, failing which permit the revision petitioner/plaintiff to



remove the same at the cost of the respondent/defendant. The open terrace and the common passage has to be commonly used by both the parties on occasions.

15. It is a well settled law that the pleadings cannot be amended after the commencement of the trial. It is pertinent to extract Order VI Rule 17 of C.P.C hereinbelow:

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”.

16. The reason adduced by the revision petitioner/plaintiff is that she did not notice the defects in the prayer at the time of filing the suit and the same has been came to light only when the lower Court counsel was preparing for an argument. Also, the revision petitioner/plaintiff failed to satisfy the condition stipulated in the proviso to Order VI Rule 17 of C.P.C



that 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.

But, in this case, no reason has been adduced by the revision petitioner/plaintiff to satisfy the Court to come to such a conclusion.

17. The trial Court after taken into consideration of the above facts and circumstances of the case, has rightly dismissed the application filed by the revision petitioner/defendant for amending the plaint in O.S.No.2640 of 2011 in para 8 (1) by deleting the words “D property after schedule 'B' and include the words “open terrace”. The Civil Revision Petition is liable to be dismissed for the following reasons:

(1) The inclusion of the word “open terrace” in the amendment for the reason that the “open terrace” is not exclusively in possession and enjoyment of the revision petitioner/plaintiff.

(2) The amendment application filed after an inordinate delay of more than four years.

(3) No valid, sufficient, genuine or bonafide reason is adduced for the delay in filing the amendment application.

(4) It is not a mistake or inadvertence for mentioning wrong schedule



'D' property as claimed by the revision petitioner/plaintiff.

(5) The revision petitioner came to know about the mistake in the schedule of the suit only when the counsel was preparing for arguments is not acceptable.

(6) No amendment application can be entertained after the commencement of trial unless the petitioner fulfill the proviso to Order VI Rule 17 read with section 151 of C.P.C

(7) By amending the prayer in the suit, the revision petitioner is introducing a new case.

18. Further, the above four decisions of the Apex Court relied by the learned counsel appearing for the petitioner is not applicable to the present case on hand, for the reasons that the proposed amendments which was the subject matter in the above four decisions were vital to decide the real controversy, issue, dispute between the parties and the proposed amendment in the case on hand introduces a new case.

19. Therefore, it is crystal clear and evident from the records that the intention of the revision petitioner/plaintiff for filing the application for



amending the prayer in suit is only to introduce a new case and it is not by mistake or inadvertence as claimed by the revision petitioner. Hence, for the foregoing reasons, I do not find any ground to interfere with the order passed by the trial Court.

20. In the result, this Civil Revision Petition is dismissed and the fair and decreetal order passed by the learned VI Assistant City Civil Court, Chennai in I.A.No.10780 of 2015 in O.S.No.2640 of 2011 (joint trial along with O.S.No.5263 of 2011) dated 19.11.2015 is hereby confirmed. No costs. Consequently, C.M.P.No.6737 of 2016 is closed.

29.04.2022

Index : Yes/No
Speaking Order/Non-Speaking Order
vm

To:

The VI Additional City Civil Court,
Chennai.



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Civil Revision Petition(PD)No.1233 of 2016

J.SATHYA NARAYANA PRASAD,J.

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Civil Revision Petition(PD)No.1233 of 2016

C.R.P(PD)No.1233 of 2016

29.04.2022