



C.R.P.No.1484 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2022

CORAM :

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

C.R.P.No.1484 of 2019

and

C.M.P.No.9705 of 2019

C.Kandasamy (died)

1.S.C.Muthusamy

S.C.Natesan (died)

S.Palani gounder (died)

2.S.Kandasamy

Sakunthala Natesan (died)

3.N.Ramya

4.S.Priya

5.P.Singaravelu

6.Perumayee

7.M.Saraswathi

K.Nagamalai (died)

8.K.Saminathan

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9.N.Srimathi

10.N.Vasantharaj

... Petitioners

Vs.

1.S.L.Arumugam

2.S.A.Kuppusamy

3.S.K.Arunachalam

M.Manokaran (died)

4.S.V.Rajendran

5.S.M.Kandasamy

6.S.C.Sadasivam

7.M.Tamilarasi

8.M.Deepa

9.M.Revathi

10.M.Nanthini

11.M.Sakthivel

12.P.Sampooranam

13.A.Viswanathan

14.A.Subramani

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15.A.Sundaravadivel

16.S.Santhi

...Respondents

(R12 to R16 impleaded as per the order of this Court dated 09.12.2022 made in Crl.M.P.Nos.1072,1074 & 1075 of 2022 in C.R.P.No.1484 of 2019)

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, setaside the fair and decretal order dated 19.11.2018 made in I.A.No.519 of 2018 in O.S.No.443 of 2007 on the file of the learned Principal Districti Munsif Court, Tiruchengode.

For Petitioners : Ms.M.Adhishree for
Mr.N.Mahokaran

ORDER

This Civil Revision Petition has been filed against the fair and final order passed by the Court below in I.A.No.519 of 2018 in O.S.No.443 of 2007 dated 19.11.2018, dismissing the application filed by the petitioners/plaintiffs under Order 6 Rule 17 of Cr.P.C to amend the pleadings.

2. The petitioners/plaintiffs filed the suit seeking for the relief of declaration of title and permanent injunction against the defendants. After

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completion of trial and framing of issues, the suit was at the stage of trial and at that point of time, an application came to be filed to add to the description of the properties in Item No.I and II to the Schedule and to add two more documents in the list of documents.

3. The Court below was pleased to dismiss the application mainly on the ground that even on earlier occasion, applications were filed to amend the pleadings and it was allowed and even at that point of time, steps must have been taken by the petitioners to seek for necessary amendment. Hence, the delay in approaching Court, that to, at the trial stage was put against the petitioners and the application was dismissed. Aggrieved over the same, this Criminal Revision Petition has been filed before this Court.

4. Heard Ms.M.Adhishree, learned counsel for the petitioners/plaintiffs. The respondents have been served with notice and their names were also printed in the cause list. They are not present in person or through counsel.

5. The short point that requires the consideration of this Court is as to whether the order passed by the Court below suffers from perversity and



whether the amendment sought for by the petitioners/plaintiffs should have been allowed by the Court below.

6. In the considered view of this Court, the amendment that was sought for was to add to the existing description of properties, based on the documents that were marked as Exs.A1 & A2. Such amendment does not really change the character of the suit or introduce any new properties. The amendment was more in the nature of proper identification by giving the correct description of the suit properties.

7. The learned counsel for the petitioners/plaintiffs brought to the notice of this Court the latest judgment of the Hon'ble Apex Court in the case of ***“Life Insurance Corporation of India v. Sanjeev Builders Private Limited”*** reported in **2022 6 CTC 485** and placed specific reliance upon paragraphs 70(iii)-(xi), where in, the Hon'ble Apex Court has culled out the principles while considering the application for amendment of pleadings. The relevant paragraphs are extracted hereunder:

“70. Our final conclusion may be summed up thus:

(i)



(ii)

(iii) *The prayer for amendment is to be allowed:*

(i) *if the amendment is required for effective and proper adjudication of the controversy between the parties; and*

(ii) *to avoid multiplicity of proceedings, provides:*

(a) *The amendment does not result in injustice to the other side;*

(b) *By the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side; and*

(c) *The amendment does not raise a time-barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations)*

(iv) *A prayer for amendment is generally required to be allowed unless:*

(i) *by the amendment, a time-barred claim is sought to be introduced, in which case the fact that the claim would be time-barred becomes a relevant factor for consideration;*

(ii) *the amendment changes the nature of the Suit;*

(iii) *the prayer for amendment is mala fide; or*

(iv) *by the amendment, the other side loses a valid Defence.*

(v) *In dealing with a prayer for amendment of*



pleading, the Court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by Costs.

(vi) Where the amendment would enable the Court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed;

(vii) Where the amendment merely sought to introduce an additional or a new approach without introducing a time-barred cause of action, the amendment is liable to be allowed even after expiry of limitation;

(viii) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the Plaint;

(ix) Delay in applying amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision;

(x) Where the amendment changes the nature of the Suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the Plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the Plaint, and is



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predicated on facts which are already pleaded in the Plaint, ordinarily the amendment is required to be allowed;

*(xi) Where the amendment is sought before commencement of trial, the Court is required to be liberal in its approach. The Court is required to bear in mind the fact that the Opposite Party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite the party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the Court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed. (See **Vijay Gupta v.Gagninder Kr.Gandhi and others, 2022 SCC Online Del 1897**)”*

9. In the considered view of this Court, the amendment that was sought for by the petitioners does not change the nature or character of the suit and the amendment also does not bring in any new properties. The amendment was more in the nature of giving proper clarity to the identification of the property and the same will ultimately be helpful at the time of disposal of the



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Suit. Hence, the Court below ought not to have dismissed the application.

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10. In the light of the above discussion, the fair and decretal order passed in I.A.No.519 of 2018 in O.S.No.443 of 2007, dated 19.11.2018 on the file of the Principal Districti Munsif Court, Tiruchengode is hereby setaside.

11. In the result, this Civil Revision Petition is allowed and there shall be a direction to the Court below to dispose of the suit in O.S.No.443 of 2007 within a period of four months from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petition is closed.

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Internet: Yes
Index: Yes / No
Speaking order /Non speaking order

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N.ANAND VENKATESH,J.

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