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CRP.(PD).No.1131 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 02.09.2022

Delivered On: 22.09.2022

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

CRP(PD).No.1131 of 2021

and

C.M.P.No.8751 of 2021

Shri Madhavan

... Petitioner/1st Respondent/1st Defendant

Vs.

1. S.Gurusamy
2. P.Bakiyam
3. P.Shanmugam
4. P.Jaya
5. K.Vijaya
6. Yuvaraj
7. The District Collector,
Salem District.
8. The Tahsildar,
Salem Taluk and District. ... Respondents/Respondents/Defendants

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 22.01.2021 made in I.A.No.04 of 2020 in O.S.No.371 of 2016 on the file of the learned Additional District Munsif – III, Salem by allowing the Civil Revision



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Petition.
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For Petitioner : Mr.A.Ilayaperumal

For Respondents : M/s.A.Srijayanthi
for Mr.Krishnan for R1

: Mr.E.Sathiyaraj for R3 to R6

: Mrs.P.Vijayadevi
Government Advocate (Crl. Side) for R2 & R8

ORDER

This Petition had been filed to set aside the order dated 22.01.2021 made in I.A.No.04 of 2020 in O.S.No.371 of 2016 on the file of the learned Additional District Munsif – III, Salem.

2. The Learned Counsel for the Petitioner submitted his arguments. When the trial commenced in the O.S.No.371 of 2016, the Learned Counsel for the Defendant had cross examined PW1 regarding the property. After cross examination of PW1, the Plaintiff had filed I.A.No.04 of 2020 in O.S.No.371 of 2016 seeking amendment under Order 6 Rule 17 of CPC, which was objected by the Defendant as it was filed with an



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ulterior motive, giving new description of the property and including survey number and also residential house in the schedule of property. Therefore, the same was objected by the Defendant, as the Defendant's valuable defence, as per the written statement will be lost, if this petition is allowed. After due enquiry, the Learned III Additional District Munsif, Salem, by order dated 22.01.2021 in I.A.No.04 of 2020 in O.S.No.371 of 2016 had allowed the amendment. Aggrieved by the same, the Defendant before the trial Court had approached this Court by filing the Civil Revision Petition.

2.1. The Learned Counsel for the Petitioner also relied on the ruling of the Hon'ble Supreme Court in ***M.Revanna Vs. Anjanamma (Dead) by Legal Representatives and Others***, reported in ***(2019) 4 SCC 332***, in support of his contention. He also invited the attention of this Court to the deposition of PW1 during the cross examination which reads thus:

“வா.சா.ஆ.1 எந்த சொத்திற்கு சம்மந்தப்பட்டவை என்றால் புல எண்.29/2 சொத்திற்கு ஆகும். மேற்படி, புல எண்.29/2 என்பது வழக்கு சொத்திற்கு அருகில் அமைந்துள்ளது. 1ம் பிரதிவாதி தாக்கல் செய்த எதிர் வழக்குரை விவரம் தெரியுமா என்றால் எனக்கு தெரியாது. உங்களால் தாக்கல் செய்யப்பட்ட வீட்டு வாரி ரசீது, கந்தாய ரசீது மற்றும்



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இதர ஆவணங்கள் ஆகியவை புல எண் 29/2 சொத்திற்கு தான் ஆகமே தவிர, புல எண் 11/4 A ற்கு சம்மந்தப்பட்டவை என்று சொன்னால் சரியல்ல.”



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2.2, The learned Counsel for the Petitioner had relied on the following rulings:

I) (2020) 11 SCC 549 in the case of Pandit Malhari Mahale Vs.

Monika Pandit Mahale and Others, the relevant portion is extracted hereunder:

Civil Procedure Code, 1908 – Or.6 R.17 proviso – Amendment of plaint – Need of finding by Court as to due diligence of party as required by Or.6 R.17 proviso – Amendment application was filed after evidence began – Held, without there being any finding by Court as to due diligence as contemplated by Or.6 R.17 proviso, Court ought not to have allowed amendment.

8. 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.

(ii) (2019) 4 SCC 332 in the case of M.Revanna Vs. Anjanamma

(Dead) by Legal Representatives and Others, the relevant portion is extracted hereunder:

“Civil Procedure Code, 1908 – Or.6 R.17 proviso – Amendment of Pleadings after commencement of trial – Not permissible except under conditions stated in proviso – Burden on person seeking amendment after commencement of trial to show “due diligence” on his part as contemplated under proviso – Bona



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fides of prayer for amendment as also prejudice to the other side should be taken into consideration – Neither can amendment be claimed as a matter of right nor has Court absolute discretion to allow amendment in view of proviso – Belated application for amendment, which if allowed, would result in travesty of justice liable to be rejected.

(iii) **CDJ 2008 SC 2090** in the case of **Vidyabai & Others Vs.**

Padmalatha & Another, the relevant portion is extracted hereunder:

“Civil Procedure Code – Order 6 Rule 17 – Amendment of written statement – Trial Court dismissed the application holding that an entirely new case is sought to be made out – High Court allowed the application – Appeal – Whether pleadings can be directed to be amended after the hearing of a case – Proviso to Order VI Rule 17 of the Code, which reads as under: “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.” - It is couched in a mandatory form. The Court's jurisdiction to allow such an application is taken away unless the conditions precedent therefore are satisfied, viz., it must come to a conclusion that in spite of due diligence the parties could not have raised the matter before the commencement of the trial – From the order passed by the learned Trial Judge, it is evidence that the Respondents had not been able to fulfill the said pre-condition – The date on which the issues are framed is the date of first hearing. Provisions of the Code of Civil Procedure envisage taking of various steps at different stages of the proceeding. Filing of an affidavit in lieu of examination in chief of the witness, would amount to 'commencement of proceeding' – It is the 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 VI, Rule 17 of the Code restricts the power of the Court. It puts an embargo on exercise of its jurisdiction. The Court's jurisdiction, in a case of



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this nature is limited. Thus, unless the jurisdictional fact, as envisage therein, is found to be existing, the Court will have no jurisdiction at all to allow the amendment of the plaint – The judgment of the High Court does not satisfy the test of judicial review. It has not been found that the learned Trial Judge exceeded its jurisdiction in passing the Order impugned before it. It has also not been found that any error of law has been committed by it. The High Court did not deal with the contentions raised before it. It has not applied its mind on the jurisdictional issue. The impugned judgment, therefore, cannot be sustained, which is set aside accordingly – The appeal is allowed.”

2.3. Therefore, the Learned Counsel for the Revision Petitioner prayed to allow the Civil Revision Petition and set aside the order passed by the Learned III Additional District Munsif, Salem in I.A.No.04 of 2020 in O.S.No.371 of 2016 dated 22.01.2021.

3. The Learned Counsel for the first Respondent submitted her arguments. As per her submission, the first Respondent in the Civil Revision Petition is the Plaintiff in the suit. The Plaintiff had purchased the property in the year 1941 in S.No.29/2 and the adjacent property was Poramboke land. Then the Plaintiff had taken possession of it and planted trees and put up construction also. Subsequently, in the year 1979, the Defendants herein had purchased the property in S.No.11/4C to an extent of 1 acre and 25 cents. In the UDR Patta in S.No.11/4A, by error, the name



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of the Defendants were included for the lands in possession of the Plaintiff.

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3.1. It is the submission of the Learned Counsel for the first Respondent that S.No.11/4A is still in possession of the first Respondent/Plaintiff. S.No.11/4C is in possession and enjoyment of the Petitioner/Defendant in CRP. S.No.11/4B is the pathway connecting both the properties. By error in inclusion of the name of the Defendants, S.No.11/4A is exploited by the Defendants, forcing the Plaintiff to file the suit. Also, the Plaintiff had filed an appeal regarding the error in including the name of the Revision Petitioner herein/Defendant in the Suit in the UDR Patta. The District Revenue Officer had conducted enquiry which is proceeding simultaneously.

3.2. The learned Counsel for the Respondent cited the ruling of this Court in ***CRP(NPD) No.647 of 2017 and CMP.No.3255 of 2017*** in the case of ***L.Jayaraman Vs. Munusami Naidu and others***, the relevant portion is extracted hereunder:

“2. The Petitioner is the Plaintiff and the Respondents are the Defendants in O.S.No.52 of 2010 on the file of the District Munsif cum Judicial Magistrate, Thirukazhukundram. They filed



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the above suit for permanent injunction restraining the Respondents from interfering with the Petitioner's peaceful possession and enjoyment of the Suit Property. The Respondents filed written statement. After contest, the Suit filed by the Petitioner was dismissed. The Petitioner filed First Appeal in A.S.No.17 of 2012. The Petitioner also filed I.A.No.281 of 2016 in A.S.No.17 of 2012 for amendment of schedule of the property to include the words "with thatched hut and fence" in schedule of property in O.S.No.52 of 2010 as well as in appeal grounds in A.S.No.17 of 2012. According to the Petitioner, the "thatched hut and fence" and interference by the Respondents were mentioned in the averments made in paragraph Nos.4 and 6 of the plaint and by inadvertence, the same was not included in the schedule of the plaint. It is neither wilful nor wanton, but due to oversight and inadvertence. The Petitioner is illiterate and plaint was prepared in English by the Counsel and therefore, he was not aware of the omission in the schedule of the property. The proposed amendment will not change the character and nature of the Suit. The Petitioner has not introduced any new cause of action and no prejudice will be caused to the Respondents. If amendment is not ordered, the Petitioner would be put to irreparable loss and injury. The amendment is necessary for the purpose of determining the real question of controversy between the parties and to avoid multiplicity of proceedings."

4. On consideration of the rival submissions, the submission of the learned Counsel for the Petitioner cannot at all be accepted, considering the fact that the Respondents/Plaintiff had preferred the Appeal before the District Revenue Officer. In support of the same, he had furnished the documents viz., letter of Revenue Divisional Officer, Salem and a reply under Right To Information Act. The fact that the Plaintiff had instituted the Suit stating that he had purchased the property in the year 1991 and



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residing property, adjacent to the property he had purchased and he had been enjoying the Poramboke property which was 11/4. Subsequently, it was sub-divided as S.Nos.11/4-A, 11/4-B, 11/4-C and 29/2 are still in possession of the Plaintiff. S.No.11/4-C is in possession of the Petitioner in Civil Revision Petition and Defendant in the Suit. S.No.11/4-B is a pathway connecting both the properties. Subsequent to Updating UDR Patta Scheme, the inclusion of the name of the Defendant for the S.No.11/4-A was exploited by the Defendant, forcing the Plaintiff to file Suit as well as the Appeal before the District Revenue Officer. The objection regarding the amendment by the Defendant, after the cross-examination is found to be unreasonable as the Plaintiff had not stated anything in favour of the Defendant during cross-examination of Plaintiff as P.W-1 on behalf of the Defendant. The Plaintiff had stuck to his contention in the Plaint. In cross-examination if the Plaintiff had admitted the enjoyment of the Poramboke land in enjoyment of Defendant, then, in such circumstances, the objection of the Defendant to the amendment in the Plaint can be rejected as valuable defence of Defendant will be lost if amendment is allowed. No such circumstances arise in this case favouring the Defendant. On mere technicalities of law, if the amendment sought by



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the Plaintiff is rejected, it will result in miscarriage of justice. By mechanically applying the general principles, even after amendment, the Defendant can file amendment to the written statement, meeting out the amendment and can adduce additional evidence. The Defendant is in noway prejudiced.

4.1. On perusal of the cross-examination of the Plaintiff in O.S.No.371/2016 in O.S.No.548/2017, it is found that it was suggested by the Defendant that the Plaintiff had not filed any document regarding enjoyment of the property under S.No.11/4-A which was denied by him. The suggestion that he had not filed any document regarding enjoyment of the land under S.No.11/4-A was denied by him. The land in S.No.11/4 is not in his enjoyment was also denied by him. Those deposition of Plaintiff in cross-examination is not at all to the benefit of the Defendants. When that be the case, the objection by the Defendant that after cross-examination of P.W-1, P.W-1 had filed Petition seeking amendment of the Plaint by including the property under S.No.11/4-A. Also in the Plaint schedule, which was objected by the Defendant that after cross-examination of the P.W-1, amendment Petition cannot be filed which was



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rejected by the learned District Munsif, Salem.

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4.2. As per the reported rulings cited by the learned Counsel for the Petitioner herein is the Defendant before the trial Court that the amendment is to be refused if the Plaintiff attempt to introduce new cause of action. Here, the Plaintiff had filed the Suit for bare injunction.

4.3. It is the contention of the learned Counsel for the Plaintiff that he had purchased the property Patta Land in S.No.29/2 adjacent to the Poramboke Land in S.No.11/4 which was enjoyed by him by planting trees from the year 1941. Whereas the Defendant in the Suit had purchased the property in alternate S.No.11/4-C, he is also in enjoyment of the portion of the same Poramboke land, at the time of UDR Patta in S.No.11/4. Instead of the name of the enjoyer of the Property/Poramboke land, inadvertently the name of the Defendant was also included whereas actually Plaintiff and the Defendant more particularly in respect of the land in S.No.11/4-A. Therefore, the Suit for injunction, the evidence in the cross-examination of the Plaintiff was regarding the same, the Plaintiff had stuck to his contention in the cross-examination. There is nothing in cross-examination



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in favour of the Defendant. For the Defendant who object the amendment on the ground of amendment in the Code of Civil Procedure, it is only a technical claim. The facts are different. The reported ruling not supporting the case of the learned Counsel for the Petitioner. The Order VI Rule 16,17,18 are extracted hereunder:

“Order 6 Rule 16 – Striking out Pleadings:

The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading -

(a) which may be unnecessary, scandalous, frivolous or vexatious, or

(b) which may tend to prejudice, embarrass or delay the fair trial of the suit, or

(c) which is otherwise an abuse of the process of the Court.

Order 6 Rule 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 term 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.

Order 6 Rule 18. Failure to amend after Order:

If a party who has obtained an order for leave to amend does not amend accordingly within the time limited for the purpose by the order, or if no time is thereby limited then within fourteen days from the date of the order, he shall not be permitted to amend after the expiration of such limited time as aforesaid or of such fourteen days, as the case may be, unless the time is extended by



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the Court.”

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4.4. In the light of the discussion, the ruling cited by the learned Counsel for the Petitioner will not help his case and no new pleadings had been introduced. It is the specific case of the Respondents/Plaintiff that the Defendant in the Suit having purchased the property Patta Land had attempted to encroach the property in his enjoyment for the Poramboke Land which had been in continuous possession of the Plaintiff from 1941. The attempt of the Petitioner herein as Defendant in the Suit is based on the error caused by the Revenue Authorities by including the name of the Revision Petitioner/ Defendant in the Suit for the property in S.No.11/4 without sub-division of S.No.11/4-A belongs to first Respondent/Plaintiff, S.No.11/4-B is the pathway connecting both the properties, S.No.11/4-C belongs to the Petitioner/Defendant. Therefore, the Plaintiff filed a Suit for bare injunction only and he cannot file a Suit for declaration of title for Poramboke Land. The Plaintiff also preferred the appeal against the inclusion of the name of the Defendant who had purchased the Patta Land, whereas the enjoyment of possession of Patta Land from the year 1941 and having possession and enjoyment of Poramboke Land from the adjacent Land from the year 1941. Based on the error that occurred in the



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Revenue Record by including the name of the Defendant, the Defendant attempted to dislodge the Plaintiff from the Poramboke Land. Therefore, the Suit for bare injunction, the evidence in cross-examination does not support the case of the Defendant. Therefore, name of the Revision Petitioner/Defendant in the Suit after cross-examination of P.W-1, the Plaintiff filed amendment Petition which was allowed by the learned District Munsif. In support of vehement objection by the Defendant that after commencement of the trial, particularly, amendment cannot be allowed as per Code of Civil Procedure (amendment 22 of 2002). In which case, he had relied on the ruling in which it had been stated that those facts are different where there had been introduction of the new case. Here, there is no introduction of new case.

4.5. In the light of the above discussion, the reliance placed by the learned Counsel for the Revision Petitioner reported in **(2020) 11 SCC 549 [Pandit Malhari Mahale Vs. Monika Pandit Mahale and Others]; (2019) 4 SCC 332 [M.Revanna Vs. Anjanamma (Dead) by Legal Representatives and Others]** and **CDJ 2008 SC 2090 [Vidyabai &**



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Others Vs. Padmalatha & Another are all regarding the valuable defence of the Defendant is lost, if the amendment is allowed. Also, the learned trial Judge had not given a finding that in spite of due diligence, the Plaintiff could not have brought the amended facts in the Plaint at the earliest point of time. Here, the suit is for bare injunction with regard to the enjoyment of Poramboke property which is adjacent to the Patta land purchased by the Plaintiff in the year 1941 where he had planted fruit bearing trees whereas the Defendant purchased the property in the year 1991. After UDR Patta, wrongly, the Defendant's name crept in which was objected by the Plaintiff regarding the enjoyment of the Poramboke land. Taking undue advantage of the said entry of the Defendant's name in the UDR Patta, the Defendant is attempting to dispossess the Plaintiff from the Poramboke land in which he had planted fruit bearing trees which are now more than 40 years old. Therefore, the Plaintiff had objected to the same with the Revenue Authorities and had preferred appeal before the Revenue Divisional Officer, Salem and the same is pending. Therefore, the Plaintiff had filed the Suit for bare injunction by inadvertence the survey number of the Poramboke land was not included in the schedule of the property. In the cross-examination of the Plaintiff as P.W-1, the Defendant



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had subjected the Plaintiff to cross examination stating that he had not filed any document as proof of his enjoyment which he had denied. On the other alternate question put to the Plaintiff as P.W-1 by the Defendant's Counsel that there are no document in support of the Plaintiff's contention that he is in enjoyment of the Poramboke land was also denied by him. He had stuck to his evidence. While so, the Plaintiff had after his cross-examination amended the Plaint by including the details of the Poramboke land in the enjoyment of the Plaintiff. When the contention in the written statement was put as suggestion to the Plaintiff, the Plaintiff had denied the averments in the written statement and had stuck to his contention in the Plaint. Nothing in his evidence in cross-examination is in support of the Defendant's contention. Therefore, the claim of the Defendant that the valuable defence of the Defendant is lost, if the amendment is accepted by the trial Court was rejected by the trial Court. It was rightly rejected so. Therefore, the ruling relied on by the learned Counsel for the Petitioner viz., ***(2020) 11 SCC 549 [Pandit Malhari Mahale Vs. Monika Pandit Mahale and Others]; (2019) 4 SCC 332 [M.Revanna Vs. Anjanamma (Dead) by Legal Representatives and Others]*** and ***CDJ 2008 SC 2090 [Vidyabai & Others Vs. Padmalatha & Another]*** will not help the



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Revision Petitioner. Mere technicalities of law that after commencement of trial the amendment shall not be allowed, if applied in this case, will result in miscarriage of justice thereby strengthen the case of the Defendant. Therefore, the name was crept in the UDR Patta by mistake for which the Plaintiff has already objected and filed appropriate Appeal before the Revenue Authorities concerned. Only to prevent this attempt of dispossession by the Defendant, the Plaintiff is before the Civil Court. At that stage, if this amendment is refused, the valuable right of the Plaintiff who had been in enjoyment from 1941 till the date of trial will be lost is to be considered only in the conclusion of the trial by the learned trial Judge concerned. Therefore, the amendment allowed by the trial Court cannot be faulted by this Court. The decision of this Court relied by the learned Counsel for the Respondent/Plaintiff in **CRP(NPD) No.647 of 2017 and CMP.No.3255 of 2017** in the case of **L.Jayaraman Vs. Munusami Naidu and others**, is found acceptable to the facts of this case. Therefore, the arguments of the learned Counsel for the Petitioner placing reliance on the ruling cited by him in paragraph No.2 are rejected.

In the result, this **Civil Revision Petition is dismissed.**



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The Order passed by the learned Additional District Munsif – III, Salem in I.A.No.04 of 2020 in O.S.No.371 of 2016 dated 22.01.2021 is confirmed. Consequently, connected Miscellaneous Petition is closed. No costs.

22.09.2022

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Index: Yes/No

Internet: Yes/No

Speaking Order/Non-speaking Order



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1. The learned Additional District Munsif – III,
Salem.
2. The Section Officer,
V.R.Section,
High Court, Madras.



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SATHI KUMAR SUKUMARA KURUP, J.

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Pre- delivery Order made in
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