



C.R.P.No.1909 of 2020
and C.M.P.No.11700 of 2020

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2022

CORAM

THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

C.R.P.No.1909 of 2020

and

C.M.P.No.11700 of 2020

K.Sampath Mandiri (Died)

Yasoda (Died)

1.Rajendiran

2.Murthi

3.Ravi

4.Selvam

Kannagi (Died)

5.Malliga

6.Sasikala

7.Maheswari

8.Kavitha

9.Sathish Kumar

10.Vijayakumar

11.Suryaprakash

12.Vikram

13.Vignesh

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14.Vinodh

15.Divya

16.Minor. Santhiya

... Petitioners

(Minor 16th petitioner is rep. by her father
Suryaprakash)

Vs.

Jayaraman

... Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal orders dated 18.12.2019 passed in I.A.No.709 of 2017 in O.S.No.330 of 2005 on the file of the Additional District Munsif, Vellore.

For Petitioners	: Mr.V.Lakshminarayanan
For Respondent	: Mr.S.T.Bharath Gowtham for Mr.T.R.Rajaraman

ORDER

This petition has been filed challenging the fair and decreetal orders dated 18.12.2019 passed in I.A.No.709 of 2017 in O.S.No.330 of 2005 on the file of the Additional District Munsif, Vellore.

2.The revision petitioners are the defendants in O.S.No.330 of 2005 on the file of the Additional District Munsif, Vellore. The



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respondent/plaintiff filed the suit for declaration of his title to the suit properties and for a consequential relief of permanent injunction restraining the defendants, their men and agents from interfering with his peaceful possession and enjoyment of the suit properties.

3.The defendants 1, 3 to 6 filed their written statement. The plaintiff, thereafter filed a petition in I.A.No.697 of 2014 under Order VI Rule 17 CPC praying to amend the plaint for inclusion of prayer of mandatory injunction directing the defendants to remove the illegal structure put up by them in the suit properties apart from seeking inclusion of the following properties in the suit schedule :

- 1) Wet S.No.3045/1, 0.17 cents, less 66 square meter.
- 2) Wet S.No.3056, 0.23 cents, less 78 square meter.
- 3) Wet S.No.3045, 0.23 cents, less 10 square meter.
- 4) 156 square meter after total extent of 0.67 cents.

According to the plaintiff, the defendants had encroached upon the suit property and had put up a construction between February 2014 and March 2014 without getting any permission from the local authorities



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concerned and hence, the same should be removed through the process of Court. The said petition was allowed by the trial Court challenging which CRP.No.1076 of 2016 was filed by the defendants before this Court. A single Judge of this Court reversed the findings of the trial Court vide orders dated 01.11.2016.

4. Thereafter, the plaintiff filed another petition under Order VI Rule 17 CPC in I.A.No.709 of 2017 and the trial Court allowed the said application vide its orders dated 18.12.2019, aggrieved over which the present Civil Revision Petition is filed.

5. Heard Mr.V.Lakshminarayanan, learned counsel appearing for the revision petitioners and Mr.S.T.Bharath Gowtham, learned counsel appearing for the respondent.

6. Mr.V.Lakshminarayanan, learned counsel for the revision petitioners would contend that when the earlier orders in I.A.No.697 of 2014 was set aside by this Court in CRP.No.1076 of 2016 dated



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01.11.2016, the plaintiff cannot file another application with similar averments under Order VI Rule 17 CPC flouting the principles of *res judicata*. His further contention is that the following tabular column would show the averments and prayers made in I.A.No.697 of 2014 and I.A.No.709 of 2017

<u>PRAYER IN IA 697/2014</u>	<u>PRAYER IN IA 709/2019</u>
PARTICULARS OF AMENDMENT 1. ADD IN PARA : 7 of the plaint. The defendants had encroached upon the suit property and had put up construction between February 2014 and March 2014, without approval or permission from Local Authority. Then entry and putting up construction are illegal and the same has to be removed by the grant of relief of mandatory injunction directing the defendants and their men to remove the illegal construction in the suit properties in default the plaintiff is entitled to remove the same through to process of this Hon'ble Court.	PARTICULARS OF AMENDMENT 1.ADD PARA 7A: the plaintiff submits that the defendants herein at the instance of the 4th defendant illegally encroached upon T.S.No.3054 item 4 of the suit property and put up construction in the last week of September 2013 and they are using the same for the sale of ceramic tiles under the trade name "Arushi Tiles". The defendants herein at the instance of the 4th defendant illegally encroached upon T.S.No.3056 item 3 of the suit property and put up illegal temporary cement shed in the third week of May 2016 and have been using the same for the sale of Second Hand Cars. Again the defendants at the instance of the 4th defendant illegally encroached T.S.No.3045/1 in the third week of December 2016 and put up illegal construction and using the same for the sale of granites under the trade name "Ganesh Granites". Hence, the plaintiff is obliged to seek the alternative relief of directing the defendants to deliver possession of the suit properties to him through process of Court.
2.Add in para 10 of the Plaint after clause (b) "(b-1) granting the relief of mandatory injunction directing the defendants their men their agents to remove the illegal structure	2. Add Para 7B after 7A. 7B: The plaintiff submits that the defendants are realizing large income from the trade and business carried on in



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<u>PRAYER IN IA 697/2014</u>	<u>PRAYER IN IA 709/2019</u>
put up by the defendants in the suit property.	the suit property from the date of encroachment and therefore they are liable to pay mesne profits to the plaintiff.
3.Add the following in the schedule of properties : 1) Add after Wet S.No.3045/1, 0.17 cents, less 66 square meter. 2) Add after Wet S.No.3056, 0.23 cents, less 78 square meter 3) Add after Wet S.No.3045, 0.23 cents, less 10 square meter 4) Add less 156 square meter after total extent of 0.67 cents.	3. Add in Para 10(b) of the plaint or in the alternative directing the defendants to deliver the possession of the suit properties to the plaintiff through process of Court.
4.Add in the particulars of valuation. The relief of mandatory injunction is incapable of valuation. Hence the same is valued at Rs.1,000.00 Court feed paid U/sec 27 (C) of TNCF Act Rs.75.50 Total value of the suit Rs.2,000.00 Total Court fee paid Rs.151.00	4.Add: b1. After Para : 10(b) of the plaint. Directing an enquiry into mesne profits payable by the defendants to the plaintiff for their illegal realization of income from the suit properties under Order 20 Rule 12 CPC.
	5. Add in Para : 8 of the plaint. The relief of possession is valued at Rs.5,000/- and pays a Court fee of Rs.375.50 in the view of 30 times of kist to the suit properties comes to Rs.138.00, under Sec. 25(a) of TNCF Act 1955. The relief of enquiry onto mesne profits is tentatively valued at Rs.5,000/- and pays a Court fee of Rs.375.50 under Section 44 of TNCF Act.
	6.Add in particulars of valuation Alternative relief of possession is valued in view 30 times Kist comes to Rs.138.30..... Rs.5,000.00 Court Fee paid under Section 44 of TNCF ACT Rs.375.50 Total Value of the suit is Rs.11,000.00



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<u>PRAYER IN IA 697/2014</u>	<u>PRAYER IN IA 709/2019</u>
	Total Court fee paid Rs.826.00
	7. Add in Para : 9 of cause of action after the word panchayatdars and before on all dates, in the third week of September, 2013 in the third week of May 2016 and in the third week of December 2016 when the defendants encroached upon the suit properties without permission of the local authority.

According to Mr.V.Lakshminarayanan, a close scrutiny of the above tabular column would clearly show that the amendment sought for in the earlier application is similar to the one sought for in the present petition except for the fact that some additional constructions allegedly put up in the year 2019 had been shown by the plaintiff just for the sake of filing the present petition.

7.Per contra, Mr.S.T.Bharath Gowtham, learned counsel for the respondent relying on the decision in *Sampath Kumar Vs Ayyakannu & Another* reported in (2002) 7 SCC 559 contended that the averments made in the application for amendment proposed to introduce a cause of



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action which has arisen to the plaintiff during the pendency of the suit and that the basic structure of the suit is not altered by the proposed amendment. He would further contend that the earlier amendment sought for by the plaintiff is totally different from the one mentioned in the present petition. His further contention is that in order to avoid multiplicity of proceedings the present amendment sought for by the plaintiff has to be allowed.

8.It is seen from the records that the earlier amendment petition in I.A.No.697 of 2014 though was allowed by the trial Court was reversed by this Court in CRP.No.1076 of 2016 only on the ground that prayers in the petition were not even pleaded in the affidavit filed in support of the petition for amendment. It is appropriate to extract the relevant portions of the orders passed in CRP.No.1076 of 2016

"13.This Court cannot but consider the act of the respondent/plaintiff in introducing prayers in the petition in I.A.No.697 of 2014 in O.S.No.330 of 2005 without making a whisper there regards in the affidavit in support thereof as clandestine and the act of the Court below in allowing such



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petition as most irresponsible. The decisions referred to above make clear that in such circumstances, this Court would exercise its jurisdiction under Article 227 of the Constitution of India to do justice. Where prayers in the petition have not been supported by pleadings / contentions in the affidavit in support thereof and the petitioners have had no opportunity to counter the same, it would be unjust to allow the order under challenge to stand. In such view of the mater, it becomes unnecessary to consider the question of limitation and non-applicability of the doctrine of relation back viz-a-viz., the ill granted prayers 1, 2 and 4 in I.A.No.697 of 2014 in O.S.No.330 of 2005."

Thus it is clear Civil Revision Petition was allowed on technical grounds.

Therefore, the same would not operate as *res judicata*.

9. Thereafter, the present petition for amendment in I.A.709 of 2017 was filed with elaborate pleadings with regard to the subsequent developments in the suit property. In *Rameshkumar Agarwal Vs Rajmala Exports Pvt. Ltd. & Others* reported in (2012)5 SCC 337 it was decided that liberal view has to be taken while allowing an amendment petition.



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Moreover, in the instant case it cannot be said that the amendment petition has been filed with malafide intentions and it is not the case of the revision petitioners also. It is the contention of the respondent/plaintiff that during the pendency of the suit the defendants encroached upon T.S. No. 3054 (item no.4 of the suit property) and put up construction. The truth or otherwise of the allegations made in the affidavit filed in support of the petition can be looked into only after full fledged trial. As far as limitation aspect is concerned an amendment once incorporated relates back to the date of the suit. In the instant case, the contention of the revision petitioner is that the amendment is being sought for after 12 years of the filing of the suit.

10.It is pertinent to point out that even as per the averments made in the affidavit in I.A.No.709 of 2017 it is spelt out that the defendants encroached upon the suit property only during September 2013 and put up additional construction in December 2016. In such circumstances, the plea made by the plaintiff may not be barred by limitation. Moreover, the aspect of limitation is a mixed question of law



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and facts. In order to avoid multiplicity of proceedings between the parties to the suit the amendment sought for in the instant case in the opinion of this Court should be allowed. The trial Court had in fact exercised its jurisdiction in the right perspective.

11.In the circumstances, I do not see any reason to interfere with the findings recorded by the trial Court. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

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Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
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R. HEMALATHA, J.
mtl

To

- 1.The Additional District Munsif, Vellore.
- 2.The Section Officer, VR Section, High Court, Madras.

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