



C.R.P.No.2973 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.09.2022

CORAM:

THE HONOURABLE Mr. JUSTICE S.SOUNTHAR

C.R.P.No.2973 of 2022

Ponnusamy (deceased)

1.Rajendaran

2.Sekar

Angammal (deceased)

.. Petitioners

Vs.

1.Durairaj

Pappa (died)

2.Dharmaraj

3.K.Sumathi

4.K.Vishal

5.Minor K.Nikitha @ Nirosha

Rep by her mother /next guardian

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the order in I.A.No.10 of 2021 in O.S.No.115 of 2004 on the file of the Principal District Munsif Court, Perambalur dated 02.09.2022.

For Petitioners : M/s.G.Surya Narayanan

For Respondents : M/s.V.Srimathi



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O R D E R

This Civil Revision Petition has been filed challenging the order passed by the Court below dismissing the amendment application filed by the revision petitioners in I.A.No.10 of 2021 in O.S.No.115 of 2004 .

2. The revision petitioners have filed a suit for bare injunction. The suit is of the year 2000, filed before the Sub Court, Ariyalur and subsequently on the question of pecuniary jurisdiction, the suit was transferred to the Principal District Munsif Court, Perambalur and it was re-numbered as O.S.No115 of 2004.

3. The respondent herein filed a written statement and contested the suit on various grounds. Admittedly, trial in the suit was already over and the matter is posted for arguments.

4. The learned counsel for the petitioner submitted that the respondents in their written arguments raised a point that the suit was not maintainable without prayer for declaration and hence, the revision petitioners/plaintiffs were constrained to file an application seeking amendment for inclusion of the prayer



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of declaration.

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5. The perusal of the affidavit filed in support of the petition seeking amendment for inclusion of the prayer, would show that in view of the new stand taken by the respondent in their written argument that suit was not maintainable without prayer for declaration, the petitioners were constrained to file amendment application at the stage of arguments.

6. The learned counsel for the respondents submitted that the suit is of the year 2000 and the respondents have filed their written statement even in the year 2014 wherein the respondents asserted the title and hence the cloud over the title of the plaintiffs was created by assertion made by the respondents in the written statement itself. The revision petitioners kept quiet for nearly 17 years and filed this petition for amendment at the time of arguments, especially after the respondents filed their written arguments. Therefore, as per the embargo created by proviso Order 6 Rule 17, the revision petitioners are not entitled to file a petition for amendment of plaint, subsequent to the commencement of trial without convincing the Court that in-spite of exercise of due diligence, they were prevented from seeking amendment of plaint even prior to commencement of trial.



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7. The perusal of the typed set of papers would suggest that the trial in the matter was already over and posted for arguments. The respondents also filed their written arguments long back and at the stage of arguments the revision petitioners have filed this amendment application seeking inclusion of prayer for declaration of title. It is settled law, as held in **Vidyabai & Ors. versus Padmalatha & Ors.** reported in *MANU/SC/8401/2008*, that a person seeking amendment of the plaint subsequent to the commencement of the trial must satisfy the Court that notwithstanding exercise of due diligence, he was prevented from filing the amendment application before commencement of the trial. The relevant portion of observation of the Hon'ble Apex Court reads as follows:

"14. 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 this nature is limited. Thus, unless the jurisdictional fact, as envisaged therein, is found to be existing, the court will have no jurisdiction at all to allow



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the amendment of the plaint."

WEB COPY 8. The perusal of the written statement filed by the respondent would suggest that a cloud was created over the title of the plaintiffs even in the year 2004 by filing of written statement. Had the petitioner exercised due diligence, he could have filed a petition for amendment, even before commencement of the trial. As rightly pointed out by the trial Court, if the amendment application is allowed at this stage, in view of the nature of relief sought for by way of amendment, necessarily, the trial has to be reopened which would cause unnecessary inconvenience to the respondents who have been fighting the legal battle for the past 22 years. Of-course delay in filing amendment application is not a criteria for refusing amendment. But, having regard to the fact that suit has been pending after completion of pleadings for nearly 17 years and this amendment application is filed after filing of written arguments by the respondents, this Court is not inclined to interfere with the order passed by the Court below rejecting the present application. Therefore, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

21.09.2022

Index: Yes/ No



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Speaking Order / Non-Speaking Order
jai

S.SOUNTHAR, J.

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To

1. The Principal District Munsif Court,
Perambalur.

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