



CRP(MD)No.738 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

CRP(MD)No.738 of 2021
and
CMP(MD)No.3995 of 2021

V.Geetha

: Petitioner

Vs.

Kamaraj

: Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to call for the records relating to the order dated 09.10.2020 passed in I.A.No.461 of 2018 in O.S.No.126 of 2017 on the file of the Additional District Munsif Court, Padmanabhapuram and set aside the same.

For Petitioner : Mr.K.N.Thambi

For Respondent : Mr.V.M.Balamohan Thambi

ORDER

The petitioner is the plaintiff in O.S.No.126 of 2017. He filed the suit for the relief of permanent injunction with respect to the suit schedule properties in S.Nos.69 & 59/2. The trial is yet to commence. At this stage, the petitioner / plaintiff has filed I.A.No.461 of 2018 under Order 6 Rule 17 CPC to amend the



plaint to add the relief of declaration and recovery of possession with regard to S.No.68/3. The trial Court dismissed this interlocutory application by order dated 09.10.2020 and challenging the same, the petitioner has moved the instant revision.

2.Learned Counsel for the petitioner submitted that the old S.No.626 has been subdivided as 68/2, 68/3, 69(part) and 59/2(part). The respondent / defendant has attempted to trespass into S.Nos.68 & 59/2 and therefore, the suit was filed for injunction as against the respondent with regard to these properties. Pending the suit, the respondent / defendant has damaged the fencing and also entered into the property in S.No.68/3 and therefore, the petitioner / plaintiff has filed the interlocutory application to amend the plaint by including the relief of declaration and recovery of possession with regard to this property as well, since this property in S.No.68/3 also forms part and parcel of old S.No.626. He further submitted that the amendment is sought for due to the new events that had taken place and that too, even prior to the commencement of the trial. In fact, a Commissioner application was filed and the learned Advocate Commissioner has also submitted a report confirming the subsequent developments. However, the trial Court has dismissed the interlocutory application.



3.He has also relied upon the following decisions in support of his case:-

- a) *M/s.Ganesh Trading Co. v. Moji Ram* [(1978) 2 SCC 91];
- b) *Jai Jai Ram Manohar Lal v. National Building Material Supply, Gurgaon* [1969 (1) SCC 869];
- c) *Ragu Thilak D.John v. S.Rayappan and Others* [(2001) 2 SCC 472];
- d) *A.B.T.Parcel Service v. C.R.Vasudevan* [(1995) 1 MLJ 129];
- e) *Ganapathy and Others v. Kandasamy and Others* [2007 (4) CTC 648];
- f) *Rajesh Kumar Aggarwal and Others v. K.K.Modi and Others* [(2006) 4 SCC 385];
- g) *Shikharchand Jain v. Digamber Jain Praband Karini Sabha and Others* [(1974) 1 SCC 675]; and
- h) *Nair Service Society Ltd. v. Rev. Father K.C.Alexander and Others* [(1968) 3 SCR 163].

4.Learned Counsel for the respondent submitted that the suit was filed only for the relief of injunction for the properties in S.Nos.69 & 59/2. The cause of action for the filing of the suit is that the respondent / defendant has attempted to trespass into the petitioner's property in S.Nos.69 & 59/2 on 15.07.2017. The



property in S.No.68/3 is in the southern side of the suit schedule property and by way of this amendment, a new cause of action would be created and as such, the entire character of the suit itself will be changed.

5.He further submitted that if the subsequent developments, as alleged by the petitioner / plaintiff, took place in the suit schedule properties, ie., in S.No.69 or in S.No.59/2, then the plaintiff can maintain a petition for amending the plaint. But, in the case on hand, the plaintiff claims that the subsequent event took place in S.No.68/3, which does not form part of the suit schedule property and in fact, it is one of the boundary of the suit schedule property and as such, the plaintiff cannot maintain a petition for amendment and he has to file a separate suit for his relief, if any. Therefore, the trial Court has rightly rejected the plea.

6.By relying upon the decision of the Hon'ble Supreme Court in ***Life Insurance Corporation of India v. Sanjeev Builders Pvt. Ltd., & Another*** [***Civil Appeal No.5909 of 2022, decided on 01.09.2022***], the learned Counsel submitted that the proposed amendment changes the nature of the suit and also the cause of action in the suit, since they are entirely canvassing a new case.



7.This Court paid it's anxious consideration to the rival submissions and also to the materials placed on record.

8.The petitioner is the plaintiff and he filed the suit for the relief of injunction as against the respondent with regard to the suit schedule properties in S.Nos.69 & 59/2. Pending the suit, he has filed the present application in I.A.No. 461 of 2018 to amend the plaint by including the relief of declaration and for recovery of possession with respect to S.No.68/3, stating that subsequently the respondent / defendant caused damage to the fencing and also trespassed into S.No.68/3 on 17.09.2017. Therefore, in order to avoid multiplicity of proceedings, he has filed the above application for amendment, even before the commencement of trial. However, the trial Court dismissed this application holding that the property in S.No.68/3 is a different property than the suit schedule properties. The trial Court further held that in view of the cause of action now alleged, the character of the suit itself would be changed.

9.In the decision in ***Life Insurance of India***'s case (supra) referred to by the respondent, the Hon'ble Supreme Court has framed certain guidelines as follows:-

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



(i) Order II Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview. The plea of amendment being barred under Order II Rule 2 CPC is, thus, misconceived and hence negated.

(ii) All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word “shall”, in the latter part of Order VI Rule 17 of the CPC.

(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, provided

(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 pleadings, 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 pinpointedly 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 for 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 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 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 & Ors., 2022 SCC OnLine Del 1897).”

10. In Clause 10, the Hon'ble Supreme Court has held that when the amendment changes the nature of the suit or the cause of action, the amendment must be disallowed. However, the Court has also held that where the amendment sought before commencement of trial, the Court is required to be liberal in its approach.



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11. In the case on hand, the suit is filed for an injunction that the respondent attempted to trespass into the petitioner's properties in S.Nos.69 & 59/2. The trial is yet to commence. Now, by way of this amendment, the petitioner claimed that the respondent, after the Advocate Commissioner's visit, has damaged the fencing and put-up a mud road in the adjacent area in S.No.68/3. The portion in S.No.68/3 is admittedly different from the survey numbers which were mentioned in the suit and by way of this amendment, the petitioner / plaintiff is also seeking the relief of declaration and recovery of possession.

12. The cause of action in the suit is that the respondent attempted to trespass into the properties. By way of this amendment, the petitioner claims that the respondent has encroached upon an adjacent land and has also created some obstructions by putting-up a road. Therefore, he has filed the above amendment to include the relief of declaration and recovery of possession with regard to the adjacent property in S.No.68/3. If the cause of action arose during the pendency of the suit, as a subsequent event, in order to avoid multiplicity of proceedings, the amendment can be permitted. The suit was originally filed with regard to the trespass of the suit properties and this subsequent event is for trespass on an



adjacent property. This will not change the basic structure of the suit and it will not change the character of the suit. Moreover, the trial is yet to commence.

13. This Court is of the view that the petitioner is not trying to introduce a new case and a fresh cause of action, which is inconsistent with the present case, but only tries to include the subsequent developments. In this regard, this Court feels it appropriate to refer to the decision of the Hon'ble Supreme Court in **Rajesh Kumar Aggarwal v. K.K.Modi [(2006) 4 SCC 385]**, wherein, it has been held as follows:-

“15. The object of the rule is that the 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.

16. Order 6 Rule 17 consists 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.

17. In our view, since the cause of action arose during the pendency of the suit, proposed amendment ought to have been granted because the basic structure of the suit has not changed and that there



was merely change in the nature of relief claimed. We fail to understand if it is permissible for the appellants to file an independent suit, why the same relief which could be prayed for in the new suit cannot be permitted to be incorporated in the pending suit.

18. As discussed above, the real controversy test is the basic or cardinal test and it is the primary duty of the court to decide whether such an amendment is necessary to decide the real dispute between the parties. If it is, the amendment will be allowed; if it is not, the amendment will be refused. On the contrary, the learned Judges of the High Court without deciding whether such an amendment is necessary have expressed certain opinions and entered into a discussion on merits of the amendment. In cases like this, the court should also take notice of subsequent events in order to shorten the litigation, to preserve and safeguard the rights of both parties and to subserve the ends of justice. It is settled by a catena of decisions of this Court that the rule of amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in the larger interest of doing full and complete justice to the parties before the court.

19. While considering whether an application for amendment should or should not be allowed, the court should not go into the correctness or 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. This cardinal principle has not been followed by the High Court in the



instant case.

20. We shall now consider the proposed amendment and to see whether it introduces a totally different, new and inconsistent case as observed by the Hon'ble Judges of the Division Bench and as to whether the application does not appear to have been made in good faith. We have already noticed the prayer in the plaint and the application for amendment. In our view, the amendment sought was necessary for the purpose of determining the real controversy between the parties as the beneficiaries of the Trust.....”

14.From the above judgment, the principles can be culled out as follows,

a) The real controversy test is the basic or cardinal test and it is the primary duty of the court to decide whether such an amendment is necessary to decide the real dispute between the parties.

b) The court should also take notice of subsequent events in order to shorten the litigation, to preserve and safeguard the rights of both parties and to subserve the ends of justice.

c) The cause of action arose during the pendency of the suit, proposed amendment ought to have been granted because the basic structure of the suit has not changed. If the same relief which could be



prayed for in the new suit, it can be permitted to be incorporated in the pending suit.

d) The court should not go into the correctness or falsity of the case in 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.

e) Whether the proposed amendment introduces a totally different, new and inconsistent case.

15. Here, the property sought to be added by way of an amendment is adjacent and part of the petitioner's property, all of which was originally under old S.No.626. It was stated that after the visit of Advocate Commissioner, the respondent on 17.09.2017 trespassed into the property and formed a mud road. This subsequent development is the reason for this amendment which is no way inconsistent with the original pleadings. The case at hand passes all of the above conditions elicited above and the new relief claimed is also within the limitation. Hence there is no change in nature of the suit.



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16. For the foregoing reasonings and discussions, this Court is inclined to interfere with the order impugned. According, the impugned order dated 09.10.2020 passed by the trial Court is set aside and the petition in I.A.No.461 of 2018 is hereby allowed.

In fine, this civil revision petition stands allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

Index : Yes / No
Internet : Yes
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16.12.2022

To

The Additional District Munsif,
Padmanabhapuram.



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B.PUGALENDHI, J.

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