



WEB COPY



CRP(MD)No.1810 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.11.2022

CORAM:

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

CRP (MD) No.1810 of 2022

and

CMP (MD) No.8102 of 2022

1.G.Parthasarathy

2.G.Ramamoorthy

: Petitioners

Vs.

1.Arulmigu Sri Viswanatha Swamy Thirukovil,
Through its Administrative Officer,
Sivakasi Town & Taluk,
Virudhunagar District.

2.The Sub Registrar,
O/o.The Sub Registrar,
Thiruthangal, Sivakasi Taluk,
Virudhunagar District.

A.M.S.Gurusamy Nadar (Died)

G.Kalyana Sundariammal (Died)

G.Jaisankar (Died)

3.Renuka

4.Rajaram

5.Praveen Raj

6.Jayalakshmi

7.Vijayalakshmi

: Respondents



CRP(MD)No.1810 of 2022

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to call for the records pertaining to the fair and decreetal order dated 07.04.2022 passed by the learned District Munsif, Sivakasi, in I.A.No. 1 of 2022 in O.S.No.62 of 2013 and set aside the same.

For Petitioners : Mr.M.Ashok Kumar

For Respondents : Mr.P.T.Thiraviam

Government Advocate for R.2

ORDER

This civil revision petition is filed by the petitioner as against the fair and decreetal order dated 07.04.2022 passed by the learned District Munsif, Sivakasi, in I.A.No.1 of 2022 in O.S.No.62 of 2013.

2.The first respondent / Temple, as plaintiff, has filed the suit in O.S.No.62 of 2013 before the District Munsif Court, Sivakasi, as against the second respondent for an injunction not to register any document in respect of the suit schedule properties. The petitioners are impleaded in the suit as the second respondent. The first respondent / plaintiff [PW1] was examined and at the time of cross examination, the first respondent / plaintiff



CRP(MD)No.1810 of 2022

filed an application in I.A.No.1 of 2022 under Order 6 Rule 17 CPC for amendment to include certain properties as Temple properties. The said application was allowed by the trial Court and challenging the same, the instant revision petition came to be filed.

3.Learned Counsel for the petitioners submitted that the suit was originally filed for injunction as against the second respondent and by way of the amendment, now reliefs are claimed in the suit and the prayer regarding recovery of possession is beyond the statutory period, as such, it is hit by limitation. He further submitted that the petitioners / defendants have denied the right of the plaintiff even in the year 2016 and therefore, they ought to have claimed the relief of declaration at the earliest.

4.This Court considered the submissions made by the petitioners' Counsel and perused the available materials.

5.The first respondent / plaintiff has filed the suit in the year 2013 for the relief of injunction as against the second respondent. Subsequently, the parties have been



impleaded in the proceedings and the issues were framed on 12.08.2021. PW1 was examined in chief and posted for cross examination. At that point of time, this interlocutory application is filed to amend the reliefs in the plaint.

6.The suit was filed by the Executive Officer of Sri Viswanatha Swamy Thirukovil. The reason assigned for the delay in filing the amendment petition is the frequent transfer of the Executive Officers and the lockdown imposed due to Covid-19 pandemic. The trial Court, being satisfied with the reasons assigned, allowed the application.

7.Order 6 Rule 17 CPC reads as follows:-

"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 terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real question 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."

WEB COPY

8.This application is filed for amendment under Order VI Rules 17 and 18 CPC can be considered at any stage of the suit proceedings and the Courts are expected to be liberal to avoid multiplicity of proceedings. The Rules of procedure are handmaid of justice and cannot defeat the substantive rights of the parties and it is well settled that amendment cannot be refused merely because of some mistake, negligence, inadvertence or even infraction of Rules or procedure.

9.In **Jai Jai Ram Manohar Lal Vs National Building Material** reported in **1969 AIR 1267** the Honb'ble Supreme Court has held that the power to grant amendment of pleading is intended to serve ends of justice and is not governed by any such narrow or technical limitations.

10.In **K.S.Alagarsamy Vs P.Natarajan**, reported in **1997 (1) CTC 292**, this Court has held that the Court may in appropriate cases allow the amendment even after the



statutory period of limitation. The question of limitation should not have been decided by the Court below at present, since it is a question to be decided on merits with oral and documentary evidence. At present we are concerned with the amendment application which is governed only by Order VI, Rule 17 of CPC. In this case, as already said, the amendment application should have been allowed since it is not going to change the nature of suit, nor does it affect the rights of the defendant. The defendant is entitled to put forward all his contention even if the amendment is allowed.

11.The question of limitation is settled in **South Konkan distilleries and another Vs Prabhakar Gajanan Naik and others** reported in **2008 (14) SCC 632** that it is a settled position of law that the Court must be extremely liberal in granting the prayer for amendment, if the Court is of the view that if such amendment is not allowed, a party who has prayed for such an amendment, shall suffer irreparable loss and injury.



12.The Hon'ble Supreme Court in ***Life Insurance Corporation of India Vs Sanjeev Builders Private Limited and Ors***, has given certain guidelines for amendment, which are extracted as follows:

"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.

The 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."

13.The plaintiff represented by the Executive Officer, due to the frequent transfer of the Executive Officers, has filed this application after the framing of charges but before the commencement of trial.

14.This Court does not find any reason to interfere with the impugned order passed by the trial Court. Accordingly, this civil revision petition stands dismissed.



CRP(MD)No.1810 of 2022

The trial Court shall frame issue with regard to the limitation separately after providing opportunity to the defendants to raise all his contentions and shall decide the issue on merits and proceed further in accordance with law. Further considering that the suit is of the year 2013, the trial Court shall dispose of the above suit within a period of six months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
Internet : Yes

11.11.2022

gk/dsk

To

The District Munsif,
Sivakasi.



WEB COPY



CRP(MD)No.1810 of 2022

B. PUGALENDHI, J.

gk/dsk

CRP (MD) No.1810 of 2022

11.11.2022