



O.S.A.No.26 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.10.2023

CORAM :

**THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ**

Original Side Appeal No. 26 of 2022
and
CMP. No. 2134 of 2022

1. V.Kupparaj
2. V.Aswin Raj
3. V.Shailesh Raj
4. V.Darshan Raj

.. Appellants

Versus

1. V.Sumanth
Mrs.Rupa (Since deceased)
2. Standard Chartered Bank,
Grindlays Building,
19, Rajaji Salai, Chennai 600 001.
3. Naveen pandurangan
4. V.Ranganathan
5. V.Srivatsa
6. Sri Sudha

.. Respondents

This Original Side Appeal filed under Order 36 Rule 9 of the Original Side Rules read with clause 15 of the Letters Patent to set aside the fair and



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decreetal order dated 22.12.2021 passed by the learned Judge in A.No.1326 of 2021 in C.S.No.160 of 2015.

For Appellants	:	Mr.K.V.Babu
For R1	:	Mr.Govind Chandrasekhar
For R3	:	Mr.S.Seshadri
For R2, R4, R5 & R6	:	No appearance

JUDGMENT

(Judgment of the Court was delivered by R. MAHADEVAN, J.)

Challenging the order dated 22.12.2021 passed by the learned Judge in A.No.1326 of 2021 in C.S.No.160 of 2015, the appellants / defendants 1 to 4 have preferred the present Original Side Appeal.

2.The necessary facts leading to filing of this appeal are as follows:

2.1. The suit in C.S.No.160 of 2015 has been filed by the first respondent herein / plaintiff praying to direct the defendants 1 to 4 to effect partition of the property admeasuring an extent of 932 sq.ft. situated on the North West Corner in New No.74-G/1, Old No.96, G.N.Chetty Road, T.Nagar, Chennai-600 017, comprised in Survey No.63, Part of S.Nos.75 & 85 and Part



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of T.S.Nos.4797 & 4798 in Thiagaraya Nagar Village, Mambalam-Guindy Taluk, Chennai District, more fully described in the schedule, and hand over half of the share of the same to the plaintiff; to direct the defendants 2 to 4 to pay a sum of Rs.30,000/- per month from the date of plaint, being the share in the mesne profits derived from the schedule property as the share of the plaintiff; and for cost of the suit. According to the plaintiff, the property that was allotted to Vummidi Anandam Chetty in the partition, is a joint family property and it would be his personal property in terms of the decisions rendered in *The Additional Commissioner of Income Tax, Madras vs. P.L.Karupan Chettiar*, [AIR 1978 Mad 1(FB)] and the *Commissioner of Wealth Tax vs. Chander Sen*, [(1986) 3 SCC 567]. Therefore, the plaintiff wanted to include one of the items of the said property allotted to the said V.Anandam Chetty in the year 1964, which was omitted to be included in the plaint and accordingly, he filed an application in A.No.1326 of 2021.

2.2. In the aforesaid application, the plaintiff sought permission to make amendments and to include certain items of property to be inserted in the 'B' Schedule of the plaint. In specific, the plaintiff sought introduction of 'B'



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Schedule property with a claim of 1/4th share therein. With regard to the amendment, he sought deletion of Paragraph No.11 of the plaint and addition of Paragraph Nos.11(A) to 11(D) to show, as to how the plaintiff is entitled to 1/4th share.

2.3. By the order impugned herein, the learned Judge, after analysing the facts and circumstances of the case, allowed the aforesaid application, holding that the amendments sought for by the plaintiff will not alter the character of the suit and it will only provide clarity and completeness to the averments made in the plaint. Challenging the same, the present Original Side Appeal has been filed by the appellants/defendants.

3.The learned counsel for the appellants / defendants submitted that the learned Judge has overlooked the applicable law, relevant facts and arrived at the conclusion that are perverse to materials on record, rendering the order impugned herein, liable to be set aside. According to the learned counsel, the property in question has been partitioned between Vummidi Anandam Chetty and the first appellant herein and it is a settled principle of law that any



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ancestral property that has come into the hands of a person on partition with its co-sharers will retain its character as ancestral property. The very need to execute the partition deed between the co-sharers arose as the property is ancestral in nature. Thereafter, upon the death of V.Anandam Chetty on 23.12.1982, the said ancestral property devolved upon the male coparceners. Therefore, the learned Judge ought to have considered that the devolution of such property will only take place in accordance with Section 6 of the Hindu Succession Act, 1956, wherein right over the ancestral property accrues by birth for male coparceners alone as was the applicable law at the relevant point of time. Whereas, the first respondent herein/plaintiff is only the son of the daughter of V.Anandam Chetty by name Mrs.Hamsa and the said Hamsa died in the year 1984 and hence, he has no locus standi to seek for inclusion of the said property. The learned counsel further submitted that it is not correct on the part of the learned Judge to observe in the order impugned herein that the stand of the appellants herein is an over reaction, when they are very much entitled to present their case, that too, when the property that was sought to be amended or included, does not have the character of separated property for partition and the recitals of the document of partition are very clear in this regard. Raising



various other grounds, the learned counsel prayed this Court to set aside the impugned order passed by the learned Judge.

4.Per contra, the learned counsel for the first respondent/plaintiff submitted that the learned Judge has analysed the issue in proper perspective and has passed the impugned order and hence, the same does not require any interference by this court.

5.We have also heard the learned counsel appearing for the third respondent and perused the materials available on record.

6.Upon consideration of the pleadings and submissions made on either side, the issue to be decided herein is, whether the order of the learned Judge allowing the application filed by the first respondent / plaintiff seeking certain amendments in the plaint, is sustainable. In this connection, it may be relevant to refer to the following decisions of the Hon'ble Supreme Court:

(i) ***Vidyabai and others v. Padmalatha and another [2008 (4) TLNJ 588 (Civil)]***:



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“7.By reason of the Civil Procedure Code (Amendment) Act, 2002 (Act 22 of 2002), the Parliament inter alia inserted a Proviso to Order 6, 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.

(ii) *J.Samuel and others v. Gattu Mahesh and others [2012 (1) PLJR*

412 (SC)]:

“18.The primary aim of the court is to try the case on its merits and ensure that the rule of justice prevails. For this the need is for the true facts of the case to be placed before the court so that the court has access to all the relevant information in coming to its decision. Therefore, at times it is required to permit parties to amend their complaints. The court's discretion to grant permission for a party to amend his pleading lies on two conditions, firstly, no injustice must be done to the other side and secondly, the amendment must be necessary for the purpose of determining the real question in controversy between the parties. However, to balance the interests of the parties in pursuit of doing justice, the proviso has been added which clearly states 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.”

(emphasis supplied)

19.Due diligence is the idea that reasonable investigation is necessary before certain kinds of relief are requested. Duly diligent efforts are a requirement for a party seeking to use the adjudicatory mechanism to attain an anticipated relief. An advocate representing someone must engage in due diligence to determine that the representations made are factually accurate and sufficient. The term “due diligence” is specifically used in the Code so as to provide a test for determining whether to exercise the discretion in situations of requested amendment after the commencement of trial.



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20. A party requesting a relief stemming out of a claim is required to exercise due diligence and it is a requirement which cannot be dispensed with. The term “due diligence” determines the scope of a party's constructive knowledge, claim and is very critical to the outcome of the suit.”

Thus, it is crystal clear that the Amendment Act, 2002 retained the power of the court to grant amendment of pleadings at any stage of the proceedings, however, subject to certain conditions to be satisfied, when amendment is sought for, after commencement of trial.

7. In the instant case, the first respondent / plaintiff sought certain amendments in the plaint, stating that his mother is one of the daughters of the deceased V.Anandam Chetty and she is entitled to 1/4th share of the joint family property, on death of her father; and that, the plaintiff was a minor, when V.Anandam Chetty died and on attaining the age of majority, he enquired the details of the properties of V.Anandam Chetty with the first defendant, but the first defendant did not share any information, while filing the suit; and after collecting the relevant information, he instituted the suit. The said application was resisted by the appellants / defendants, mainly on the ground that the property, which is sought to be included, is an ancestral property and it cannot



be brought-in for partition. Admittedly, in the suit, trial is yet to commence. In such circumstances, this court is of the view that the first respondent / plaintiff has shown due diligence; and that, the amendments sought only support the averments made by him in the suit. As pointed out by the learned Judge, if Paragraph-11 of the plaint as was existing is perused, it gives only vague information and there was no clarity. But, the amendments sought to be made, will provide clarity and completeness to the averments made in the plaint. The issues with regard to application of law to the facts of the case and the share to which the plaintiff is entitled, and the character of the property, for which partition is sought for, will be decided in the main suit, after post-trial. If it is an ancestral property, the law relating to ancestral property will come into play. The amendments sought for by the plaintiff will not have any impact on the result of the suit. Therefore, as rightly observed by the learned Judge, amending the pleadings will not cause prejudice to the appellants herein as the nature / character of the property will only be decided by the court and that, allowing the amendments sought for, would not amount to passing a decree against the appellants. Hence, we refrain from interfering with the order impugned herein.



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8.At this juncture, the learned counsel for the appellants submitted that the written statement was filed as early as in the year 2015 and hence, liberty may be given to the defendants to file additional written statement.

9.In view of the above, the Original Side Appeal is dismissed, leaving it open to the appellants to raise all the grounds before the trial court, where the suit is pending. It is open to them to file additional written statement, if so advised. No costs. Consequently, connected miscellaneous petition is closed.

[R.M.D., J.] [M.S.Q., J.]

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Index : Yes / No
Speaking / non-speaking order
Neutral Citation : Yes / No
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