



C.R.P.PD.No.705 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	25/4/2023
Pronounced on	28/6/2023

C O R A M

THE HONOURABLE Dr.JUSTICE D.NAGARJUN

Civil Revision Petition PD No.705 of 2023

a n d

C.M.P.No.5512 of 2023

Govindasamy ... Petitioner

Vs

1. Dhanalakshmi
2. Ramya
3. Aarthi
4. Balaji ... Respondents

Prayer: Petition filed under Article 227 of the Constitution of India to set aside the order dated 24/1/2023 made in I.A.No.3 of 2022 in O.S.No.175 of 2009 on the file of the learned District Munsif Court, Perundurai.

For Petitioner ... Mr.N.Manoharan

For respondents ... Mr.A.Sundaravadhanam



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ORDER

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The plaintiff who is not successful in getting the approval of the trial Court, for amendment of plaint filed, under Order 6 Rule 17 of the Code of Civil Procedure, in I.A.No.3 of 2022 in O.S.No.175 of 2009, on the file of the learned District Munsif, Perundurai has filed this Civil Revision Petition.

2. The facts in brief are that the petitioner has filed a suit for partition against the respondents/defendants of the schedule of properties and to allot one half of the share to the petitioner and the remaining half share to the respondents/defendants. The respondents have filed written statements, issues have been settled, plaintiff's evidence was completed, defendants evidence was also completed and the matter was posted for arguments. At that stage, the petitioner has moved an application, in I.A.No.3 of 2022, seeking to amend the plaint and the same was declined by the trial Court.

3. Heard Mr.N.Manoharan, learned counsel for the petitioner and Mr.A.Sundaravadhanam, learned counsel for the respondents.



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4. Perused the entire materials available on record.

5. The petitioner who has originally filed a suit for partition of the schedule of property alleging that the petitioner and respondents are entitled for half of the share each, intend to amend the plaint claiming that he is the exclusive owner of the plaint schedule, giving a go by to his earlier admission, that the respondents are entitled for half of the share.

6. Order 6 Rule 17 of the Code of Civil Procedure runs as under:-

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 questions 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.”

7. The proviso to the above provision permitting the parties to amend the pleadings is that the amendment shall not be entertained, once the trial has commenced. In the case on hand, not only trial has commenced, but the trial has also concluded.

8. Learned counsel appearing for the petitioner submitted that he has been seeking the amendment of plaint, as the petitioner got the orders from the District Revenue Officer, Erode and consequential order of Village Administrative Officer, Revenue Inspector and Tahsildar, wherein certain amendments in the revenue records are made to the effect that he is the owner in respect of the schedule of property. Orders which the petitioner/plaintiff stated to have been obtained are pertaining to the years 2017 – 2020 which are subsequently to the filing of the suit. However, the question to be seen is that the revenue records will not decide the title of a person over the specific schedule of property. The



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petitioner has not filed a suit for declaration of title. The petitioner has sought for partitioning of the schedule of properties and allotting half of the share. Therefore, when both the petitioner/plaintiff and respondents/defendants are claiming their rights, therefore, their ancestral revenue records will not make the petitioner entitle in respect of entire schedule of property. Therefore, prior to filing of the suit itself, the petitioner should have make up his mind as to whether he is entitled for half of the share or more than that. In fact, if he is entitled for entire extent, there is no need for filing of a suit for partition. He is instructed to file a suit for declaration that he is the exclusive owner of entire schedule of property. The very fact that he has filed a suit for partition shows that the respondents have also got some share in the schedule of property. Now, by way of proposed amendment, the petitioner wanted to take away the right of the defendant as admitted by him in the pleadings and claim the entire schedule of property. Even if the proposed amendment is accepted, how can it be a suit for partition when the petitioner claiming the entire schedule of property.

9. Further, it is the settled legal proposition that though amendment of plaint can be allowed, even on the subsequent stage, in order to



determine real questions involved between the parties in the suit, amendment shall not be permitted, in case, if the proposed amendment takes away the admissions made by the plaintiff, changes the very nature of the suit. By way of proposed amendment, the petitioner wanted the entire schedule property belong to him which he earlier pleaded that the respondents have got half share, he also wanted to amend the prayer portion. He also wanted to amend the cause of action and the entire plaint. In fact, if the petition is allowed, it amounts to rewriting of the entire pleadings which shall not be permitted at all.

10. In RAJESH KUMAR AGGARWAL AND OTHERS Vs. K.K.MODI AND OTHERS, reported in (2006) 4 SUPREME COURT CASES – 385, the Hon'ble Supreme Court has held that

“15. The object of the rule is that 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.



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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.”

11. In view of the discussion made above, the trial Court has rightly dismissed the application sought for amending the plaint and therefore, this Court is of the considered view that there is no need to intervene.



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12. In the result, this Civil Revision Petition is dismissed. No costs.
Consequently, the connected Miscellaneous Petition is closed.

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Index: Yes/No

Neutral Citation: Yes/No

To

The District Munsif Court, Perundurai.

Pre-delivery order made in
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