



CRP. No.1977 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.03.2023

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

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1.P.Ramakrishnan
2.R.Validevi
3.R.Vasanthakumar

...Petitioners

Vs.

1.M/s Madha Constructions and Properties Pvt. Ltd.,
Rep by its Managing Director,
S.Peter
2.S.Peter
3.The Manager,
Indian Bank,
Guindy Branch,
Chennai – 600 032.

...Respondents.

PRAYER: This Civil Revision Petition is filed under Section 227 of the Constitution of India, against the fair and decreetal order dated 15.02.2019 passed in I.A No.976 of 2018 in O.S No. 602 of 2016 passed by the learned Additional District Munsiff, Alandur.

For Petitioners : Mrs. Chitra Sampath, Senior counsel,
for T.S.Baskaran



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For R1 and R2 : Mr.R.Singaravelan, Senior Counsel,
for V.Ambika
For R3 : No appearance

ORDER

This Civil Revision petition has been filed against the fair and decreetal order dated 15.02.2019 passed in I.A No.976 of 2018 in O.S No. 602 of 2016 by the learned Additional District Munsif, Alandur.

2. The petitioners herein are the respondents in I.A No. 976 of 2018 in O.S No 602 of 2016, on the file of the Additional District, Munsif, Alandur, filed by the plaintiffs/first and second respondents herein under Order 6 rule XVII of CPC, to amend the plaint as described in the petition in I.A No. 976 of 2018, which was allowed by the Trial Court, despite objection raised by the defendants/petitioners herein about its maintainability and its jurisdiction. Aggrieved over the said order the defendants preferred this revision petition.

3. The learned counsel for the petitioner/defendant submitted that while allowing the amendment application filed by the respondent/plaintiffs in I.A No. 976 of 2018 in O.S No. 602 of 2016, the learned District Munsif Judge, Alandur, without considering the objection raised by the petitioner



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herein about the maintainability as well as earlier order passed by this Court

in C.R.P No. 1928 of 2018. Further, the learned counsel for the petitioners argued that the Trial Court has wrongly entertained the said application, especially when this court has refused to allow the application for leave under Order 2 Rule 2 of CPC, at earliest occasion. However, for the same contention the plaintiff filed the said amendment application in order to achieve unlawful gain. In spite of dismissing the application filed by the respondents by this Court, the Trial Court erroneously allowed the said amendment application as such is unfair, unjust and liable to be set aside. Hence she prayed to allow this petition.

4. By way of reply the learned counsel for the respondent submitted that while filing the suit there is a sale agreement between the parties. Subsequent to that there was a developments like clearance of bank loan which necessitated the plaintiff to file amendment application to amend the pleadings with regard to specific performance and the same would not cause any prejudice to the defendants and those facts was rightly appreciated by the Trial Court while allowing the amendment application. Hence he prays to dismiss this petition. Further the learned counsel for the respondents submitted that this petition is infructuous for the reason that after



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amendment, the plaintiff was directed to represent before the appropriate forum. Accordingly case was transferred to the District Court, Chengapet, O.S No.131 of 2019 was assigned and respondents also paid necessary Court fee. Even assuming that there is an error on the side of the Trial Court, by allowing the amendment application even without jurisdiction now the suit is transferred to the appropriate forum so the order of the Trial Court not cause any prejudice to the plaintiff's. To support his contention he relied the judgement of the Supreme court reported in 2001 (1) SCC 712 in the case of B.K. Nayinar Pillai Vs Paramaswar Pillai and another:

The purpose and object of Order 6 Rule 17 CPC is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. The power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interests of justice on the basis of guideline laid down by various High Courts and this Court. It is true that the amendment cannot be clawed as a matter of right and under all circumstances, But it is equally true that the courts while deciding such prayers should not adopt hypertechnical approach. Liberal approach should be the general rule particularly in cases where the other side can be compensated with the costs. Technicalities of law should not be permitted to hamper the courts in the administration of justice between the parties. Amendments are allowed in the pleadings to avoid uncalled for multiplicity of litigation.

This Court in [A.K. Gupta & Sons vs. Damodar Valley Corporation](#) [1966 (1) SCR 796] held:

"The general rule, no doubt, is that a party is not allowed by amendment to set up a new case or a new cause of action particularly when a suit or new case or cause of action is barred: [Weldon v Neale](#) (1887) 19 QBD 394. But it is also well recognised that where the amendment does not constitute the addition of a new cause of action or raise a different case, but amounts to no more than a different or additional approach to the same facts, the amendment will be allowed even after the expiry of the statutory period of limitation: [See Charan Das v. Amir Khan](#) AIR



1921 PC 50 and *LJ. Leach and Company limited and another v. Jardine Skinner and Company* 1957 SCR433.

The principal reasons that have led to the rule last mentioned are, first, that the object of courts and rules of procedure is to decide the rights of the parties and not to punish them for their mistakes (*Cropper v. Smith* (1884) 26 Ch.D. 700) and secondly, that a party is strictly not entitled to rely on the statute of limitation when what is sought to be brought in by the amendment can be said in substance to be already in the pleading sought to be amended in *Kishandas Rupchand v. Rachappa Vithoba* (1909) ILR 33 Born. 644 approved in *Pirgonda Hongonda Patil v. Kalgonda Shidgonda Patil* 1957 SCR595.

The expression 'cause of action' in the present context does not mean 'every fact which it is material to be proved to entitle the plaintiff to succeed' as was said in *Cooke v. Giff* (1873) 8 CH 107. in a different context, for if it were so. no material fact could ever be amended or added and, of course, no one would want to change or add an immaterial allegation by amendment. That expression for the present purpose only means, a new claim made on a new basis constituted by new facts. Such a view was taken in *Robinson v. Unicos Proper Corporation limited* 1962-2 All ER 24, and it seems to us to be the only possible view to take. Any other view would make the rule futile. The words 'new case' have been understood to mean 'new set of ideas': *Doman v. J.W. Ellis and company Limited* 1962-1 All ER 303. This also seems to us to be a reasonable view to take. No amendment will be allowed to introduce a new set of ideas to the prejudice of any right acquired by any party by lapse of time."

Again in *Smt. Ganga Bai v. Vijay Kumar & Ors.* [1974 (2) SCC 393] this Court held:

"The power to allow an amendment is undoubtedly wide and may at any stage be appropriately exercised in the interest of justice, the law of limitation notwithstanding. But the exercise of such far reaching discretionary powers is governed by judicial considerations and wider the discretion, greater ought to be the care and circumspection on the part of the Court."

In *M/s. Ganesh Trading Company v. Moji Ram* [1978 (2) SCC 913] it was held;

"it is clear from the foregoing summary of the main rules of pleadings and provisions for the amendment of pleadings, subject to such terms as to costs and giving of all parties concerned necessary opportunities to meet exact situations resulting from amendments, are intended for promoting the ends of justice and not for defeating them. Even if a party or its Counsel is inefficient in setting out its case initially the short coming can certainly be removed generally by appropriate steps taken by a party which must no doubt pay costs for the inconvenience or expense caused to the other side from its omissions. The error is not incapable of being rectified so long as remedial steps do not unjustifiably injure rights accrued.



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The principles applicable to the amendments of the plaint are equally applicable to the amendments of the written statements. The courts are more generous in allowing the amendment of the written statement as question of prejudice is less likely to operate in that event. The defendant has a right to take alternative plea in defence which, however, is subject to an exception that by the proposed amendment other side should not be subjected to injustice and that any admission made in favour of the plaintiff is not withdrawn. All amendments of the pleadings should be allowed which are necessary for determination of the real controversies in the suit provided the proposed amendment does not alter or substitute a new cause of action on the basis of which the original I's was raised or defence taken. Inconsistent and contradictory allegations in negation to the admitted position of facts or mutually destructive allegations of facts should not be avowed to be incorporated by means of amendment to the pleadings. Proposed amendment should not cause such prejudice to the other side which can not be compensated by costs. No amendment should be allowed which amounts to or relates in defeating s legal right accruing to the opposite part on account of lapse of time. The delay in Filing the petition for amendment of the pleadings should be properly compensated by costs and error or mistake which, if not fraudulent, should not be made a ground for rejecting the application for amendment of plaint or written statement.

5. The point to be decided is whether the amendment of plaint allowed by the Trial Court as such is maintainable in law or not?

6. By relying the judgement of the Supreme Court in the case of Ragu Thilak D.John Vs s.Rayappan and Others reported 2001 (1) SCC 472 the learned counsel for the respondent submitted that amendment sought could not be declined, the dominant purpose of allowing the amendment under order 6 rule 17 is to minimise the litigation. Furthermore, ratio laid down in the above referred case relied by the respondent is that as per the order 6 rule 17 of CPC the amendment application could not be allowed as



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it would allegedly change the nature of the suit or some prejudice caused to the defendants. In the instant case, the contention of the plaintiff/respondents is that subsequent developments necessitated the plaintiff to file the application to amend the pleadings by incorporating prayer for relief of consequential relief by filing amendment application. After amendment the relief sought in the suit is more than crores. Hence want of jurisdiction the Trial Court directed the respondents to file a suit before the appropriate forum. Hence the said amendment would not cause prejudice to the petitioners.

7. Per contra, the learned counsel for the petitioner submitted that at the earliest occasion the plaintiffs has filed an application under order 2 Rule 2 of CPC seeking for leave of the Court to file comprehensive relief of specific performance, which was dismissed by the Trial Court holding that comprehensive relief could not be sought in the said bare injunction suit which is consequential relief, but the plaintiff filed application seeking permission to file comprehensive suit to avoid payment of Court fee in bare injunction suit. Though the Trial Court has no jurisdiction to consider the value of the sale agreement if it is subjected for enforcement. Accordingly the said application was dismissed. The said order was challenged by the



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respondents herein and filed CRP No.1928 of 2018, this Court confirmed the Trial Court findings by held that the Trial Court has no pecuniary jurisdiction to entertain the application since total value of the sale agreement was 39,37,50,000/- and the specific performance is a comprehensive relief and the permanent injunction is a consequential relief, the comprehensive relief cannot be claimed by filing the application under Order 2 Rule 2 of CPC, thereby dismissed the Civil Revision Petition. After dismissal of the said Revision petition, for the same relief for specific performance the plaintiff filed present I.A No. 976 of 2018 under Order 6 Rule 17 of CPC for amendment on 18.09.2018 within two months from the date of disposal of said revision petition. Hence, it clearly reveals the malafide intention of the plaintiffs/respondents to incorporate prayer of specific performance to avoid limitation. But the Trial Court allowed the said interlocutory application without considering the findings given by this Court and entertained the said application for amendment as such is clear abuse of process of law. Hence she prayed to set aside the findings rendered by the Trial Court.



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8. On bare perusal of the plaint pleadings, it reveals that the plaintiff/respondent herein filed O.S 602 of 2016 on the file of the Additional District Munsif, Alandur, for permanent injunction restrain the defendants to suit properties. The contention of the plaintiff is that defendants' 1,2 and 3 are absolute owners of the total extent of suit properties to extent of 63,000 square feet of land and building and they agreed to sell it to the plaintiff to that effect sale agreement was executed between them on 06.06.2012 and total sale consideration was fixed as 39,37,50,000/- and defendants received 16,75,00,000/- and **also the defendant's are running several educational institutions and ready to pay balance consideration for the suit properties but they have to clear the loan borrowed by them from by way of deposit of title, so they were not ready to get sale deed executed.** But attempted to make encumbrance hence they filed the suit for permanent injunction with regard to C schedule property against which sale agreement devolves.

9. Per contra, though the defendant admitted to sale agreement contend that plaintiff not perform their part of the agreement within time, which is the essence of the contract of the sale agreement is un-interference



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under law also barred by under section 4 of specific relief act, in respite of filing comprehensive relief of specific performance the plaintiff filed present suit of permanent injunction is not maintainable. During the pendency of the said suit plaintiff preferred application under order 2 rule 2 seeking leave of the Court reserve their right to suit for specific performance in I.A No. 1561 of 2016 the said application was objected by the defendants stating that relief of permanent injunction is consequential relief, comprehensive relief is suit for specific performance so the relief claimed by the applicant as such is maintainable for the reason that relief which sought in the present suit can be prayed in the comprehensive suit, and to avoid payment of Court if the plaintiff chose to file present application and the also value of the property in the sale agreement the Trial Judge dismissed the said petition as no pecuniary jurisdiction to deal with matter. Aggrieved over this the plaintiff preferred Civil Miscellaneous Petition concludes that beyond pecuniary jurisdiction of the Munsif Court, held that trial Court has no jurisdiction to deal with matter thereby petition was dismissed. In CRP No. 1928 of 2018 this Court also confirmed the findings of the Trial Court. Thus in all the above earlier proceedings, this Court observed that Munsif Court have no pecuniary jurisdiction to



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entertain the application.

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10. Thereafter the present application was filed by the plaintiff. On perusal of the amendment sought by the plaintiffs in I.A 976/2018 particulars of the amendment sought by the plaintiffs mentioned as 24, A, B, C, D, E, F, G paragraph in the plaint entire particulars of the amendment clearly reveals that in order to incorporate and also include the prayer for specific performance directing the defendants to execute sale deed on receipt of balance sale consideration 22,24,25,000/- and possession with alternative remedy and other alternative relief of Rs.7,44,27,500/- with 24% p.a., and also Court fee assigned Rs.89,05,575.50. so amendment sought by the plaintiff is for the relief of specific performance, as relief claimed is subject to 30 crores, said application was strongly objected by the defendant by filing their objections. But on perusal of the Trial Court order trial Judge paragraph 7 of the order is extracted hereunder.

7. Admittedly, the petitioner/plaintiff filed this suit for the permanent injunction restraining the respondent from interfering with his peaceful possession and enjoyment of the suit property. Now, this petition has been moved to amend the plaint to include the specific performance relief of the suit properties that, the pending suit, the respondent made attempt to alienate the said property and changed physical features. The defendants 1 to 3 have executed a sale agreement dated 06.06.2012 in his favour undertaking to sell the entire properties referred in the schedule A and executed sale deeds and conveyed only a part of the said properties, which more fully described in schedule – B and did



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not executed the said sale deed in respect of the property referred in schedule – C. His purchase the said property, the defendants 1 to 3 failed to comply their part of the contract. In the petition itself, the petitioner has specifically pleaded that the offending construction was made only when the suit has been pleading, this court cannot reject this petition. Whether the respondents have made offending constructions and whether the respondent had put up construction within schedule of properties are matter for the trial and before the trial, the court cannot curtail the right of the petitioner to get an amendment as asked for. Therefore, this Court is inclined to allow this application."

11. As rightly pointed out by the petitioners' counsel the Trial Court not discussed about the maintainability of the amendment application sought by the plaintiff, as stated by the learned counsel the entire amendment particulars was pertaining to the relief of specific performance and not with regard to the construction put up during the pendency of the suit. Furthermore, the Trial Court not discussed about the permissibility of the amendment in the suit nor it assigned any reason whether the said amendment would cause prejudice to the defendant. It is settled proposition that while amending pleadings the Court shall consider, it would not cause any prejudice to the other parties and also should assign reason for seeking for amendment during the pendency of the proceedings but case in hand the Trial Court failed to assign any reason nor discuss about the permissibility of the amendment. It is pertinent to note that before the Trial Court on the side of the defendants produced earlier CRP order passed by this Court about the pecuniary jurisdiction which was marked as Ex.R8 but the Trial



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Judge not considered despite it was brought to the knowledge of the earlier proceedings as well as findings rendered by this Court. Moreover, as on date, said CRP order was not challenged by the plaintiff therefore which reached its finality.

12 Accordingly trial Court has no pecuniary jurisdiction to try the suit. In spite of the said order the plaintiff clandestinely filed application for amendment after dismissal of previous Civil Revision petition by incorporating prayer for the relief of specific performance to that effect they want amendment in pleadings by including many number of paragraphs which runs into the two pages dealing about the circumstances in filing the suit for specific performance. If the plaintiff is really want to file suit for specific performance he should have approached the concerned Court holding pecuniary jurisdiction for the value of the property as per the disputed sale agreement between the parties. They should have withdraw suit for permanent injunction pending before the Alandur Munsif Court, and can file suit for specific performance by paying necessary Court fee. Even though present plaint is pending before the appropriate forum plaint might have rejected due to reason of limitation or other legal complications and to avoid the same after dismissal of the said CRP by holding that



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Munsif Court has no pecuniary jurisdiction since because value of the properties is more than 30 crores, again they preferred another application by incorporating relief of specific performance by way of amendment as such is clearly reveals the back door way adopted by the plaintiff by way of unlawful means. So also District Munsif Court, Alandur also not only failed to applied his mind but also simply ignored the order passed by this Court with regard to pecuniary jurisdiction and entertained said application is totally unreasonable one. Moreover, his order was a cryptic order without assigning any reason for allowing the amendment. However on seeing the conduct of the plaintiff after dismissal of the earlier revision petition, holding that Munsif Court has no pecuniary jurisdiction to try the said issue between the parties, again they filed another application to amend the pleadings by incorporating relief of specific performance with value of the property nearly 30 crores paying 8 lakhs Court fee before the Munsif Court and then get order to transfer suit to the District Court is clear abuse of process of law and same could not be entertained. The ratio laid down in the above referred cases by the respondent herein is though acceptable but not applied to the facts of the present case.

13.The conduct of the plaintiff as well as relief claimed in the



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amendment application certainly cause prejudice to the right of the defendant. Therefore order passed by the Trial Court is liable to be set aside.

Further the argument advanced on the side of the respondent/plaintiff is not acceptable one for the reason that plaintiff filed said amendment petition after disposal of Civil Revision Petition wherein it was held that the Trial Court has no pecuniary jurisdiction, ignoring the said order they knowingly filed another application for the same relief by incorporating comprehensive relief by paying Court fee for thirty Crores and get the suit transferred to the District Court as such is unfair and liable to be set aside. On considering the conduct of the plaintiff it clearly denotes that they abused the process of law for their unlawful gains. Hence revision is allowed. Consequentially order passed by the Trial Court to transfer the suit to District Court is liable to be set aside. In view of the reasons stated above, the fair and decreetal order dated 15.02.2019 passed in I.A No.976 of 2018 in O.S No. 602 of 2016 by then learned Additional District Munsiff, Alandur, is hereby set aside. Further the liberty is given to the plaintiff to get Court fee refunded and file separate suit for specific performance as per manner known to law.

14. In the result, the Civil Revision Petition is allowed. No



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