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C.R.P.No.1927 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16.03.2023

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

C.R.P.No.1927 of 2021
and
C.M.P.No.14965 of 2021

Thangavel

... Petitioner

Versis

Varudharaj

... Respondent

Civil Revision Petition is filed under Article 227 of Constitution of India, to allow civil revision petition, by setting aside the fair and decretal order dated 11.03.2021 passed in I.A.No.1 of 2020 in O.S.No.192 of 2012 on the file of the learned Additional District Munsif, Namakkal.

For Petitioner : Mr. M. Premkumar
for Mr.S.Senthil
For Respondent : Mr. R. Rajesh

ORDER

This Civil Revision Petition is filed to set aside the fair and decretal order dated 11.03.2021 passed in I.A.No.1 of 2020 in O.S.No.192 of 2012 on the file of the learned Additional District Munsif, Namakkal.



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2. The Plaintiff is the Revision Petitioner and the Respondent is the Defendant in the suit in O.S. No. 192 of 2012. The Plaintiff has filed the suit praying to declare that he is the owner of the property described in the plaint. Consequently to restrain the Defendant-Respondent from interfering with his peaceful possession of the property. On entering appearance in the suit, the Respondent-Defendant filed his written statement repudiating the plaint averments.

3. When the suit was posted for trial, on 09.12.2020. The Plaintiff had filed the instant application in I.A. No. 1 of 2020 under Order VI Rule 17 of CPC praying to amend the plaint. The reasons stated in the affidavit is that during trial, he had gone through the plaint averments and came to know that certain material averments were omitted to be included. It is stated that the Plaintiff had filed the suit for declaration on the ground that he is in possession of the plaint described property owned by the Defendant. It is also stated that the father of the Plaintiff was in possession of the plaint schedule property and after his death, the Plaintiff continued to remain in possession. However, in the plaint, he has failed to state that his possession is open, continuous, uninterrupted, with the knowledge of the Defendant. In other words, the plea



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with regard to adverse possession had not been raised in the plaint. Therefore, he sought to insert para No.6-A in the plaint to include the averments that the possession of the Plaintiff in the plaint schedule described property is open, continuous, uninterrupted and with the knowledge of the Defendant.

4. Opposing the averments in I.A. No. 1 of 2020, the Defendant as Respondent filed counter affidavit contending *inter alia* that the instant application filed after eight years after institution of the suit is baseless and frivolous. It is stated that the averments in the instant application are contrary to the pleadings in the plaint and therefore, if it is entertained, it would alter, vary and modify the fundamental pleadings raised in the plaint.

5. The learned trial Judge, on going through the pleadings in the plaint and the amendment sought to be made by the Plaintiff dismissed the application on the ground that if the amendments are entertained, it would convert and modify the nature of pleadings sought for in the plaint and it would tantamount to raising fresh averments. Accordingly, the trial court dismissed the application, which has given rise in filing the instant Civil Revision Petition.



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6. Learned Counsel for the Revision Petitioner submits that as per the plaint averments, the Plaintiff claimed right over the property by adverse possession. After the defendant had entered appearance, he filed written statement and issues were framed by the Court. The suit was posted for trial. The Plaintiff as petitioner has thereafter filed petition in I.A. No. 1 of 2020 in O.S. No. 192 of 2012, seeking to amend the plaint. The learned Counsel for the Petitioner invited the attention of this Court to the proposed amendment and submits that if the proposed amendment is permitted, no prejudice will be caused to the Defendant in any manner.

6.1. Learned counsel for the Revision Petitioner placed reliance on a decision of Hon'ble Supreme Court in ***Pankaja and Another Vs. Yellappa (dead) by Lrs. And Others*** reported in ***(2004) 6 SCC 415***, wherein, in para 12, it has been held as follows:-

"12. So far as the court's jurisdiction to allow an amendment of pleadings is concerned, there can be no two opinions that the same is wide enough to permit amendments even in cases where there has been substantial delay in filing such amendment applications. This Court in numerous cases has held that the dominant purpose of allowing the amendment is to minimise the litigation, therefore, if the facts of the case so permit, it is



always open to the court to allow applications in spite of the delay and laches in moving such amendment application."

6.2. Further, the learned Counsel for the Revision Petitioner placed reliance on a decision of Hon'ble Supreme Court in ***Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited and Another*** reported in ***2022 SCC OnLine SC 1128*** PG.11

6.3. It is the submission of the learned Counsel for the Petitioner that as per the reported rulings of the Hon'ble Supreme Court, the amendment has to be allowed by adopting a lenient approach to sub-serve the interest of justice. Here, in this case, the learned Additional District Munsif, Namakkal had dismissed the amendment petition stating that it is belated. Therefore, the learned Counsel for the Plaintiff-Revision Petitioner prayed to allow this Civil Revision Petition and set aside the order of dismissal of the petition seeking amendment of plaint dated 11.03.2021.

7. Opposing the amendments, the learned Counsel for the Respondent had invited the attention of this Court to the pleadings in the plaint and the averments in the instant application for amendment of the plaint and submit that the Plaintiff is attempting to introduce a new case which cannot be



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permitted under law. The proposed amendment, if permitted, would alter the nature of the *lis* and in which event, the Defendant will be highly prejudiced.

Learned Counsel for the Respondent further submits that not only the delay, the Plaintiff had attempted to introduce a new case in the guise of amending the plaint after eight years of institution of the suit. The application for amendment lacks bona fides and therefore, the trial court is wholly justified in dismissing the same. He therefore prayed for dismissing the Civil Revision Petition with costs.

8. Heard the learned counsel for both sides and perused the materials placed on record, including the order passed by the learned Additional District Munsif, Namakkal.

9. Originally, the suit was filed by the Plaintiff during January 2012. In Para No.3 of the plaint, it was contended that the plaint described property and other properties were purchased by the Plaintiff's mother Chinna Pillai @ Pavayammal on 15.02.1975 for a valid sale consideration. Thereafter on 31.03.2012, his mother had executed a settlement deed in his favour. It is further averred that from the date of settlement, the Plaintiff is in possession of the plaint described property. Further, in In Para No.5 of the plaint, it was



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stated that the Defendant approached the Plaintiff and expressed his willingness to purchase the suit property, but the plaintiff was not willing to sell it. At the same blush, in para No.6 of the plaint, it was stated that the predecessors of the plaintiff have been in continued possession of the plaint described property and that the plaintiff has perfected his title by adverse possession in as much as his possession is open, adverse and continued to the knowledge of the Defendant.

10. This Court, in this Civil Revision Petition, is not inclined to go into the correctness or otherwise of the averments made in the plaint. It is needless to mention that the defendant has filed his written statement on 22.11.2012 and contesting the suit. While so, after eight years, the present application has been filed to include certain averments in the plaint relating to adverse possession. As mentioned above, the plea with respect to adverse possession has already been made in para No.6 of the plaint. While so, it is not known as to what is sought to be achieved by the plaintiff by amending the plaint. In the opinion of this Court, the petition for amendment has not been filed with any bona fides. The plaintiff appears to be only attempting to delay the suit proceedings in the guise of amending the plaint. In any event, the amendment sought for in the present application is unnecessary as the plaintiff



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has already made similar pleadings in para No.6 of the plaint. The plaintiff has to rise or fall only on the strength of the pleadings he made in the plaint, at first, and he cannot be permitted to amend the pleadings after eight years during the commencement of the trial. When the amendments sought for are unnecessary, this Court is of the considered view that the trial court is right in dismissing the application for amendment and it does not call for interference by this Court.

11. In the result, the order dated 11.03.2021 passed in I.A.No.1 of 2020 in O.S.No.192 of 2012 on the file of the learned Additional District Munsif Judge, Namakkal is confirmed. The Civil Revision petition is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

16.03.2023

Index: Yes/No

Neutral Citation: Yes/No

AT



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To

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- 1.The Additional District Munsif Judge, Namakkal.
- 2.The Section Officer,
V.R.Section, High Court, Madras.



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SATHI KUMAR SUKUMARA KURUP, J

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