



CRP.No.3865 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 04.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

CRP.No.3865 of 2022
and CMP.No.20278 of 2022

P.Kanakarajan

... Petitioner / Plaintiff

Vs.

M.Manirathinam alias Mani

... Respondent/Defendant

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 12.10.2022 made in I.A.No.7 of 2022 in O.S.No.333 of 2020 on the file of the Principal District Munsif Court, Salem, Salem District.

For Petitioner : Mr.D.Selvaraju

For Respondent : Mr.K.Selvaraj

ORDER

This Civil Revision Petition has been instituted to set aside the order dated 12.10.2022 passed in I.A.No.7 of 2022 in O.S.No.333 of 2020 on the file of the Principal District Munsif Court, Salem District.



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2. The revision petitioner is the plaintiff, who instituted the Suit for Permanent Injunction and Mandatory Injunction. During the pendency of the Suit, the petitioner/plaintiff filed an Interlocutory Application in I.A.No.7 of 2022 under Order 6 Rule 17 CPC to amend the plaint.

3. The learned counsel for the petitioner made a submission that the amendment sought for by the petitioner in the plaint would not change the character of the Suit and moreso, the relief of declaration sought for in the interlocutory application is incidental and further, the issue with regard to the amendment sought for also had been framed and adjudicated. Thus, the amendment sought for by the revision petitioner would not cause any prejudice to the interest in the Suit and thus, the Trial Court had committed an error in rejecting the application filed by the petitioner under Order 6 Rule 17 CPC. In support of his contention, the learned counsel for the revision petitioner relied on the judgment of the Hon'ble Supreme Court in *Varun Pahwa v. Renu*



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Chaudhary reported in **MANU/SC/0307/2019**, wherein the Hon'ble

Supreme Court has made the following observations:

“9. The memo of parties is thus clearly inadvertent mistake on the part of the counsel who drafted the plaint. *Such inadvertent mistake cannot be refused to be corrected when the mistake is apparent from the reading of the plaint. The Rules of Procedure are handmaid of justice and cannot defeat the substantive rights of the parties. It is well settled that amendment in the pleadings cannot be refused merely because of some mistake, negligence, inadvertence or even infraction of the Rules of Procedure.* The Court always gives leave to amend the pleadings even if a party is negligent or careless as the power to grant amendment of the pleadings is intended to serve the ends of justice and is not governed by any such narrow or technical limitations....”

4. Relying on the above judgment, the learned counsel for the petitioner stated that the Rules of Procedure are handmaid of justice and cannot defeat the substantive rights of the parties and in the event of not allowing the application, the plaintiff/revision petitioner necessarily has to file another Suit which will cause prejudice to the interest of the plaintiff and thus, the Civil Revision Petition is to be considered.



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5. The learned counsel for the respondent/defendant objected the above contentions by stating that the Trial Court has considered the nature of amendment and found that it is altogether different from the original relief sought for in the plaint by the revision petitioner/plaintiff. The learned counsel for the respondent/defendant has drew the attention of this Court with reference to the averments made in the affidavit filed in support of the Interlocutory Application filed in I.A.No.7 of 2022 and in para 7 of the affidavit, the petitioner/plaintiff has averred as follows:

“7. In his pleadings and evidences, the defendant admits more than once that the east-west pathway is running on the south side of the suit 1st schedule property with the burden of easement right. Also during his cross examination, he admits the pathway south of the 1st schedule property. Contradicting his pleadings, evidences and even the registered sale deed executed by him in favour of my vendors, he denies east-west pathway running beyond the west of the western boundary of north-south pathway in his proof affidavit and Ex.B7. Further, Ex.A9, a registered pathway agreement deed executed by defendant, was shown by the defendant's advocate during my cross examination and when I replied that I was not aware of that document,



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he withdrew it without marking the same. Subsequently, I applied for a certified copy of the same and when it was produced during defendant's cross examination, he blatantly lied that he did not execute the said registered pathway agreement deed. Backtracking his contradiction partly, during his cross examination, he alleges that excepting me, all others who purchased land from him, have easement pathway right in the suit 2nd schedule property.”

6. Relying on the above affidavit filed in support of the Interlocutory Application, the learned counsel for the respondent contended that the Trial Court is right in rejecting the application, since the amendment sought for would change the character of the Suit and moreso, the trial was concluded and the Suit is posted for final arguments and at that point of time, amendment cannot be considered at all. The learned counsel for the respondent/defendant has relied upon the judgment of the Hon'ble Supreme Court in ***Vijay Hathising Shah and Another v. Gitaben Parshottamdas Mukhi and Others*** reported in ***(2019) 5 SCC 360***, wherein the Hon'ble Apex Court made the following observations:

“9.In our view, the trial Court was right in rejecting the application. This we say for more than one



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reason. First, it was wholly belated ; second, Respondent I- plaintiff filed the application for amendment of the plaint when the trial in the suit was almost over and the case was fixed for final arguments; and third, the suit could still be decided even without there being any necessity to seek any amendment in the plaint. In our view, amendment in the plaint was not really required for determination of the issues in the Suit.”

7. Order 6 Rule 17 CPC proviso clause stipulates that no application 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. In the present case, the petitioner/plaintiff had ample opportunity to amend the prayer seeking declaration, however he has not chosen to amend the prayer even during the trial and admittedly, the trial has concluded and the Suit is posted for final arguments.

8. The Trial Court has made a finding based on the issues, trial commenced and both sides evidence completed and now the Suit is in the argument stage and thus, the amendment sought for is post trial amendment. Moreover, the amendment petition will introduce a totally



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new case, which will create further complications in crystallising the rights of the parties. That apart, the revision petitioner/plaintiff has not shown that inspite of the due diligence, he could not raise the matter before the commencement of trial, which is a pre-condition contemplated under the proviso clause to Order 6 Rule 17 CPC. In the event of the amendment petition filed post trial seeking amendment, the petitioner has to establish that inspite of due diligence, he could not raise the matter before the commencement of the trial. But, in the present case, the mandatory requirement contemplated under the proviso clause to Order 6 Rule 17 CPC has not been satisfied and thus, the Trial Court has arrived at the conclusion that the amendment petition cannot be allowed.

9. This Court is of the considered opinion that the judgment referred to by the petitioner has no application with reference to the facts and circumstances of the present case. In the present case, the Trial was concluded and the Suit is posted for final arguments. The amendment application has been filed post trial and the petitioner was



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not able to establish the pre-condition contemplated under the

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proviso clause and therefore, the Trial Court is right in dismissing the petition seeking amendment of the prayer in the Suit. Thus, this Court is not inclined to consider this Civil Revision Petition.

10. Accordingly, the Civil Revision Petition stands dismissed.

No costs. Consequently, connected miscellaneous petition is also dismissed.

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Index :Yes/No
Speaking Order :Yes/No
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