



CRP (MD) No.530 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	02.08.2023
Pronounced on	07.09.2023

CORAM:

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

CRP (MD) No.530 of 2023
and
CMP(MD)No.2523 of 2023

1.Susila

2.Selvi.Jothi

3.Amutha

4.Selvi

5.Uma

6.Aruna

(6th petitioner rep. through her
power agent 5th petitioner)

... Petitioners

Vs.

1.Vellandi Ambalam

2.Mariammal

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 17.10.2022 passed in I.A.No.518 of 2022 in O.S.No.266 of 2010 on the file of the Additional District Munsif Court, Dindigul.



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For Petitioners : Mr.V.Meenakshi Sundaram
for Mr.R.Mohana Sundaram

For Respondents : Mr.K.Arunraj

ORDER

The above civil revision petition is filed as against the order passed in I.A.No.518 of 2022 in O.S.No.266 of 2010 on the file of the Additional District Munsif Court, Dindigul.

2. The revision petitioners as plaintiffs filed the suit in O.S.No.266 of 2010 for the relief of recovery of possession. During the pendency of the suit, the revision petitioner filed an application under Order 6 Rule 17 CPC for amending the plaint in respect of the Survey Number from 21/1C to 21/1D. The said application was resisted on the side of the respondents/defendants. However, the trial Court dismissed the above application by stating that the case is now at the stage of arguments and since the petition has been filed belatedly, the same cannot be entertained. Aggrieved by this, the present civil revision petition is preferred.

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3. The learned counsel appearing for the revision petitioners would submit that the suit property is situated in Survey No.21/1D and it has been wrongly described in the schedule of property as if the suit property is situated in 21/1C. Therefore, by amending the plaint in this regard, it would not change the nature of the claim in the suit. However, the trial Court erroneously rejected the claim of the petitioners/plaintiffs without considering the fact that the amendment of pleadings can be allowed by the Court at any stage of the proceedings, which is necessary for the purpose of determining the real questions in controversy between the parties. He would further submit that the Court has to avoid hyper-technical approach while dealing with amendment of pleadings and ordinarily required to be liberal, especially if other side can be compensated by costs. To support his contention, he has relied upon the decision reported in **2022 (1) MWN Civil 87**.

4. On the other hand, the learned counsel for the respondents/defendants would contend that amendment was sought belatedly and when trial was almost over and the case is fixed for final arguments. He would



further contend that, if it was not really required for determination of the issue in the suit, the amendment cannot be allowed. His further contention is that if such amendment is allowed, it would change the nature and character of the suit. To support his contention, he has relied upon the decisions reported in *AIR 2019 SCC 119* and *AIR 2019 SCC 940*.

5. Having heard the learned counsel for the parties and on perusal of the records of the case, it is found that already the petitioners have filed an application in I.A.No.116 of 2017 for amending the survey number in the schedule of property and the same was allowed on 13.03.2019. In that application, it was stated that earlier in the plaint, the survey number was mentioned as 21/1D and after passing of the order in I.A.No.116 of 2017, the survey number was changed into 21/1C. Again the petitioners has come forward with the present application in I.A.No.518 of 2022 to change the survey number back to 21/1D. Admittedly, the case is at the stage of arguments. Now, the point for consideration before this Court is as to whether the such amendment can be permitted?



6. The prayer for amendment can be allowed in the following situations:-

(i) if it is necessary for determining real question in controversy;

(ii) if it is required for effective and proper adjudication of controversy;

(iii) to avoid multiplicity of proceedings;

(iv) it does not cause injustice/prejudice to other side;

(v) does not seek to withdraw any clear admission made by party which confers right on other side;

(vi) does not raise time-barred claim;

(vii) it would aid in rendering more satisfactory decision;

(viii) to rectify absence of material particulars in plaintiffs;

(ix) it merely introduced additional/new approach without introducing time-barred cause of action, such amendment can be allowed even after expiry of limitation;

(x) only relief sought to be amended and is predicated on facts already pleaded in plaint.

However, the amendment is not permissible if it: (i) results in injustice to other side; (ii) withdraws any clear admission made by party which confers right on other side; (iii) introduces time-barred claim divesting other side of



valuable right accrued; (iv) changes nature of suit or cause of action to set up entirely new case; (v) is male fide; or (vi) deprives other side of valid defense.

7. In the present case, though it is the second petition for amending the survey number, as rightly pointed out by the Hon'ble Apex Court in the decision reported in **2023(1) MWN Civil 87** as referred to by the learned counsel for the revision petitioners, the Courts must avoid hyper-technical approach while dealing with the amendment of pleadings and by amending the survey number, the charterer or nature of the suit will not be changed for the reason that the amendment is not sought for changing the boundaries or the extent of the suit property. Therefore, only when the party introduced a time-barred claim resulting in divesting of the other side of a valuable right accrued and changes the nature of suit, such amendment cannot be permitted, when it results injustice to other side. By allowing this petition, no prejudice would be caused to the other side. More over, where the amendment does not result in irreparable prejudice to the opposite parties and such amendment is necessary for the Court to effectively adjudicate on the main issues in



controversy between the parties, the amendment should be allowed.

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8. Further adverting to the facts of the present case, it is clear that the amendment is for exact identification of the property with reference to survey numbers. It is worth mentioning that the identity of the property is not at all disputed in the written statement. Even though, the amendment is being brought after commencement of the trial, it is to the effect of clarifying the description of property and making the particulars in the schedule in an explaining manner properly, this Court is of the considered opinion that no question of limitation would arise. Allowing of the application would in no manner and in no way prejudice the rights of the defendants. By means of incorporation of the amendment, the rights of the defendants would not be affected. It is obvious that there could be no change in the nature of the suit, no alternation in the nature, character and the cause of action of the suit and there could also be no possibility for different cause of action to crept in. Following the principles laid down by the Hon'ble Apex Court and this Court on this issue, it is held that the amendment sought in the present case by the petitioners, deserves to be allowed, by means of which, no hardship would be



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caused to the respondents and they have got every opportunity to file an additional written statement containing objections to the amendment.

9. In such view of this matter, the order passed by the trial Court is liable to be set aside. However, no doubt while exercising such liberal approach the opposite parties should be compensated by costs. Accordingly, the order passed in I.A.No.518 of 2022 on the file of the Additional District Munsif Court, Dindigul is set aside and the same is allowed on condition that the petitioners shall pay a sum of Rs.5,000/- to the respondents within a period of two weeks from the date of receipt of a copy of this order.

10. In the result, this Civil Revision Petition is allowed. Consequently, connected miscellaneous petition is closed.

07.09.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes
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To

The Additional District Munsif,
Dindigul.



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K.GOVINDARAJAN THILAKAVADI

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order made in
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