



CRP (MD) No.454 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Reserved on	08.08.2023
Pronounced on	07.09.2023

CORAM:

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

CRP (MD) No.454 of 2023

and

CMP(MD)No.2171 of 2023

- 1.M.Mariammal
- 2.M.Sethuraman
- 3.B.Alagammal
- 4.M.Ramalingam
- 5.N.Seethalakshmi
- 6.M.Seenivasan

... Petitioners

Vs.

D.Balasubramanian
S/o.V.Duraisamy Chettiar
(on his own behalf and on behalf of
Nagalapuam Vaniga Chettiargal
Nandhavanm Pillayar Koil Public
Charitable Trust, Nagalapuram
In the representative capacity)

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 19.12.2022 made in



CRP (MD) No.454 of 2023

I.A.No.460 of 2022 in O.S.No.115 of 2015 on the file of Subordinate Court,
Kovilpatti and allow the civil revision petition.

For Petitioners : Mr.P.Rajagopalan

For Respondent : Mr.T.R.Subramanian

ORDER

The above civil revision petition is preferred as against the order passed in I.A.No.460 of 2022 in O.S.No.115 of 2015 on the file of the Sub Court, Kovilpatti.

2. The above suit in O.S.No.115 of 2015 was filed by the respondent/plaintiff for declaration that the partition release deeds dated 15.06.2015 viz., Document Nos.1662 and 1663/2015, Vilathikulam Sub Registrar Office, as null and void and for consequential permanent injunction to restrain the petitioners/defendants from alienating the third schedule property on the strength of the above release deeds. During the pendency of the above suit, the respondent/plaintiff filed an application to amend the



plaint by stating that the suit is filed in respect of the right of the plaintiff charitable trust. Thereafter, the defendants created documents against the interest of the trust. However, a relief for declaration of title of the plaintiff was not sought for in the above suit. Hence, the plaintiff filed the petition to withdraw the suit with liberty to file a fresh suit. The said petition was dismissed by the trial Court by stating that the plaint can be amended in this regard. Thereafter, the plaintiff filed the petition in I.A.No.460 of 2022 in O.S.No.115 of 2015 to amend the plaint. The said petition was objected by the defendants stating the relief of declaration sought for after lapse of seven years from the date of filing the suit and therefore, the same cannot be entertained. However, the trial Court allowed the application by imposing costs of Rs.10,000/- to the respondent. Against which, the present revision is preferred.

3. The learned counsel for the petitioners would submit that the present amendment would change the character and tenure of the suit proceedings and the said application is filed during the cross-examination of the respondent. The observation made by the trial Court in the application to



withdraw the suit filed by the plaintiff that the plaint can be amended, cannot be a reason for allowing the application for amendment in a mechanical way without considering the object and intention of the plaintiff in filing the application for amendment during cross-examination. It is only an attempt to fill-up the lacuna and therefore, the order passed by the trial Court in I.A.No. 460 of 2022 is liable to be set aside.

4. On the other hand, the learned counsel for the respondent/plaintiff would submit that the respondent/plaintiff filed the present suit for the benefit of the Nagalapuram Vaniga Chettiargal Nandhavanam Pillayar Koil Public Charitable Trust. The plaintiff belongs to Nagalapuram Village and he is one of the descendants of the original donors and in possession of joint patta in respect of the suit property. It is submitted that though the patta stands in the name of the plaintiff, the property belongs to the trust. The plaintiff has filed the above suit for the welfare and benefit of the trust. He would further submit that the petitioners/defendants, who are also descendents of the donors, with the view to knock away the trust property, are engaged in creating documents and therefore, it has become necessary to safeguard the



CRP (MD) No.454 of 2023

properties for the benefit of the trust. In such circumstances, the respondent/plaintiff filed the suit for declaration that the deeds styled as partition release deeds dated 15.06.2015 as null and void. It is further submitted that the existing description of the property as detailed in the trust deed, is incorrect, which does not include the subsequent development made in the property. Hence, it has become necessary to amend the schedule of property. Therefore, the plaintiff filed an application in I.A.No.416 of 2021 to withdraw the suit with liberty to file a fresh comprehensive suit, especially, after the sangam has become defunct. However, the application was dismissed by the Court below and granted permission to amend the suit accordingly. Hence, the plaintiff filed the present application to amend the plaint. It is further submitted that the documents filed along with the plaint would clearly establish that the suit properties belong to the trust and the Uravinmural Sangam has become defunct. Therefore, it has become necessary to declare that the suit properties belong to the Trust and to that effect, the plaint has to be amended to include the prayer for declaration and also for the relief of permanent injunction preventing the defendants from encumbering the suit property in any way, except for the benefit of the Trust.



CRP (MD) No.454 of 2023

Considering the above facts, the trial Court has rightly allowed the application to amend the plaint, which calls for no interference.

5. Heard on both sides and records perused.

6. Order 6, Rule 17 CPC contemplates that the Court may, at any stage of the proceedings, allow either party to alter or amend his pleading in such manner and on such terms, as may be just, and all such amendment shall be made as may be necessary for the purpose of determining the real question in controversy between the parties. But no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that inspite of due diligence, the party could not have raised the matter before the commencement of trial. In the present suit, the plaintiff has filed an application in I.A.No.416 of 2021 for withdrawal of the suit with liberty to file a fresh suit seeking for declaration of title. However, the Court below dismissed the above application by stating that the requirement of the petitioner can be complied by amending the plaint. In pursuant to the said order, the plaintiff has filed the present application for amending the plaint.



It is well settled law that amendment in the pleadings cannot be refused merely because of some mistakes, negligence, inadvertence or even in fraction of the rules of procedure. The Court always grant leave to amend the pleading even if a party is negligent or careless, as the power to amendment of the pleadings is intended to serve the ends of justice and is not governed by any such narrow or technical limitations when the plaint is not properly drafted. Leave to amend the pleadings may be refused only if it introduces a totally different, new and inconsistent case or changes the fundamental character of the suit. Therefore, the power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interest of justice. The Courts would, as a rule, decline to allow amendment, if a fresh suit on the amended claim would be barred by limitation on the date of application. But that is the factor to be taken into account in exercise of the discretion as to whether amendment should be ordered and does not affect the power of the Court to order it, if that is required in the interest of justice. If amendment did not really introduce a new fact at all nor did the defendant have to meet a new claim set up for the first time after the expiry of the period of limitation, it can be allowed. Similarly, if there is special circumstances namely no new



material facts need to be added at all and only an alternative prayer in law had necessarily to be made in view of the original pleas in law being discarded the amendment even beyond the period of limitation, can be allowed.

7. In the present case, at the first instance, the plaintiff has sought for the relief to declaration that the release deeds in favour of the defendants as null and void by stating that the suit properties belong to the Nagalapuram Vaniga Chettiargal Nandhavanam Pillayar Koil Public Charitable Trust and the properties were maintained and controlled by the Sangam. According to the plaintiff, the defendants have fraudulently created two partition release deeds in respect of the third schedule property and therefore, the plaintiff was constrained to file the above suit to declare the above documents are null and void and for consequential permanent injunction to restrain the defendants from alienating the third schedule property. However, in the written statement, the defendants have categorically stated that the suit third schedule property was the assignment land given to Mekkaiya Chettiar and he was in exclusive possession and patta also stands in the name of Mekkaiya Chettiar and all the kist paid by him and after the death of Mekkaiya Chettiar, the



CRP (MD) No.454 of 2023

legal heirs are in possession and enjoyment of the same. In such circumstances, the first petitioner released her share and executed the partition release deed dated 15.06.2015 in favour of the petitioners 2 to 6 and it is further stated that the third schedule II Item in S.No.96/3 with an extent of 26 cents belongs to the father of Mokkaia Chettiar, namely, Dhanuskodi Chettair and Vanniya Perumal Chettiar as patta No.427 stands in their name and further after his lifetime, the legal heirs entered into oral partition, in which, 13 cents on the northern side was allotted to the legal heirs of Vanniya perumal. In such circumstances, the first petitioner released her share and as such executed partition release deed in favour of the petitioners 2 to 6. It is further contended that the respondent/plaintiff has no *locus standi* to file the suit on behalf of Vanika Chettiar Community Sangam and neither the Sangam nor the plaintiff is in possession of the suit property.

8. After commencement of trial and cross examination of PW1 was completed and posted for continuation of evidence, the respondent/plaintiff filed an application in I.A.No.460 of 2022 to amend the plaint to add the relief of declaration to declare that the suit schedule 1 and 2 properties are



belonging to the Nagalapuram Vaniga Chettiargal Nandhavanam Pillayar Koil Public Charitable Trust and also to amend the description of property.

In this petition, the sixth petitioner filed a counter contending that in the year 2015 itself, the petitioners/defendants filed the written statement that the suit is not maintainable without seeking the relief of declaration and after the lapse of seven years, the respondent filed the petition for amendment and also to alter the four boundaries in the suit schedule property, that too, after cross-examination of respondent and the present amendment is hit by limitation. However, the Court below, considering the facts and circumstances of the case, allowed the said petition.

9. No doubt, the right to sue for declaration of title first arose on the facts of the present case on 19.09.2015, when the original written statement clearly denied the plaintiff's title. However, if the granting of an amendment really subserves the ultimate cause of justice and awards further litigation, the same should be allowed. An amendment seeking declaration of title, shall not introduce a different relief, when the necessary factual basis had already been laid down in the plaint in regard to the title. In the present case, the plaintiff



CRP (MD) No.454 of 2023

sought for the relief to declare the deeds created by the defendants as null and void. The specific stand taken by the respondent/plaintiff is that the suit properties belong to the Trust. Therefore, by allowing such amendment, it only relates back to the date of the initial institution of the suit. Hence, such amendment is not barred by limitation. On the other hand, it is necessary for the purpose of determining the real question in controversy between the parties and no prejudice would be caused to other side by allowing such amendment, since the petitioners/defendants have ample opportunity to defend their case in this regard. Therefore, there is no perversity in the order passed by the trial Court and this Civil Revision Petition is liable to be dismissed.

10. In the result, this civil revision petition is dismissed. No costs. consequently, connected miscellaneous petition is closed.

07.09.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes
cp

11/12



WEB COPY



CRP (MD) No.454 of 2023

K.GOVINDARAJAN THILAKAVADI

cp

To

The Subordinate Judge,
Kovilpatti.

order made in
CRP (MD) No.454 of 2023

07.09.2023

12/12