



C.R.P.(MD) Nos.1089, 1090, 1091 & 1092 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on

13.09.2023

Pronounced on

21.12.2023

CORAM

THE HON'BLE MRS. JUSTICE K.GOVINDARAJANTHILAKAVADI

C.R.P.(MD) Nos.1089, 1090,1091 & 1092 of 2023

and

C.M.P(MD) Nos.5108, 5109, 5111 and 5112 of 2023

C.R.P(MD).Nos.1089& 1090 of 2023

1.R.Jayanagammal

2.J.Rajaretnam

3.R.Jeyakumar

4.R.Pravin

... Revision Petitioners/plaintiffs 2to 5

Versus

K.Kumarasamy

... Respondent/1st defendant

Prayer in C.R.P(MD).No.1089/2023: This Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order, dated 19.12.2022 passed in I.A.No.5 of 2022 in O.S.No.129 of 2009 on the file of the II Additional Sub Court, Nagercoil, by allowing this civil revision petition.



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Prayer in C.R.P(MD).No.1090 of 2023: This Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order, dated 17.03.2023 passed in Rev.Petition No.14 of 2023 in I.A.No.5 of 2022 in O.S.No.129 of 2009 on the file of the Special Court (Forest Cases), Nagercoil, by allowing this civil revision petition.

C.R.P(MD).No.1091& 1092 of 2023

R.Jayanagammal

... Petitioner/
revision petitioner

K.Kumarasamy

... Respondent

Prayer in C.R.P(MD).No.1091/2023: This Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order, dated 19.12.2022 passed in I.A.No.6 of 2022 in O.S.No.159 of 2009 on the file of the II Additional Sub Court, Nagercoil, by allowing this civil revision petition.

Prayer in C.R.P(MD).No.1092 of 2023 : This Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order, dated 17.03.2023 passed in Rev.Petition No.10 of 2023 in I.A.No.6 of 2022 in O.S.No.159 of 2009 on the file of the Special Court (Forest Cases), Nagercoil, by allowing this civil revision petition.



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For Revision Petitioner : Mr.V.Meenakshisundaram
in all CRPs

For Respondents : Mr.S.Meenakshisundaram
in all CRPs Senior Counsel
for Mr.N.Dilip Kumar

COMMON ORDER

According to the Revision Petitioners, the original suit in O.S.No.129 of 2009 was filed for the following reliefs:-

A. A decree for declaration that the document of lease No. 1283/2005 dated 12.08.2005 of the Sub Registrar's Office, Bhoothapandy, Kanyakumari District, executed by the second defendant as Power of attorney holder of the first plaintiff in favour of the first defendant is cancelled since null and void and vitiated by undue influence and it will not bind the rights of the plaintiffs over the plaint schedule property.



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B. A decree be given for recovery of the plaint schedule property and its management and administration from the defendants in favour of the plaintiffs 2 to 5, failing which, liberty may be given to the plaintiffs to take possession of the plaint schedule property through Court and all the cost of the same is to be recovered from the first defendant. If the court so finds that the impugned lease deed binds on the plaintiffs, the decree may be given as an alternative relief for A and B reliefs.

C. A decree be given directing delivery of the plaint schedule property by the tenant first defendant to the landlord, plaintiffs 2 to 5 by receiving the advance amount of Rs. 3,30,000/- and failing which, liberty be given to the plaintiffs 2 to 5 to recover possession of the same through Court by depositing the advance amount in the court and to recover the costs for getting recovery of the plaint schedule property.

D. A decree for permanent injunction restraining the first defendant from encumbering, alienating, sub leasing, creating charges or



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lien and or inducting new persons in the alleged lease hold right over the plaintiff schedule property and from cutting and removing any trees or altering the physical features of the property or to do any act of waste prejudicial to the right, claim and title of the plaintiffs over the plaintiff schedule property

E. The first defendant be directed to pay future mesne profits for one year at the rate of Rs. 79,36,950/- (Rupees Seventy nine lakhs thirty six thousand nine hundred and fifty only) per annum and for future years and the profits may be computed on a formula linked to the rubber prices and the first defendant may be asked to pay it until the recovery / possession of the plaintiff schedule property to plaintiffs 2 to 5.

2. According to the Revision Petitioners, the original suit in O.S.No. 159 of 2009 was filed for the following reliefs:

A. To declare the sale deed No. 1282/2005 of Boothapandy Sub Registrar's Office dated 12-08-2005 executed by the second defendant in favour of the first defendant as null and void for want of consideration and it is vitiated by fraud, cheat and undue influence and it will not bind the plaintiff.



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B. A decree be granted for recovery of possession of the plaint schedule property from the first defendant with all trees, fixtures, factory, roads and water courses, etc. with good condition.

C. An injunction be granted restraining the 1st defendant, his men and agent and persons claiming under him from cutting and removing trees and other plantations and transporting the same from the plaint schedule property.

D. A decree for recovery of future mesne profits at the rate of Rs.25 lakhs per annum. for the ate of filing of the suit till the recovery of possession of plaint schedule property from the first defendant.

3. It is submitted that as per the order passed by this Court in C.R.P. (MD).Nos.2546 and 2607 of 2010, the matter was remanded to the trial Court for appointment of Advocate Commissioner. The trial Court also appointed an Advocate Commissioner to inspect the suit property and to



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make an inventory of all the available tree and other income yielding plantations, available machineries, buildings and other available superstructures in the plaint schedule properties. The Commissioner also inspected the suit properties and filed a detailed report. In the said report, it is mentioned that the total number of fallen trees were 10,500 and it is valued about Rs.84,00,000/-(Rupees Eighty Four Lakhs only) in both the plaint schedule properties mentioned in O.S.No.129 of 2009 and O.S.No.159 of 2009. Further, the value of the fallen tree in O.S.No.129 of 2009 is about Rs.60,00,000/- (Rupees Sixty Lakhs only) and the value of fallen tree in the property mentioned in O.S.No.159 of 2009 is about Rs.24,00,000/-(Rupees Twenty Four Lakhs only) In such circumstances, the petitioners/plaintiffs in O.S.No.129 of 2009 filed the amendment petition in I.A.No.5 of 2022 and in O.S.No.159 of 2009 filed the amendment petition in I.A.No.6 of 2022 for necessary amendment in the relief column, more particularly, that the 1st defendant admitted the fact that he has taken away the fallen trees. The main amendment petition in I.A.No.5 of 2022 and I.A.No.6 of 2022 was opposed by the 1st respondent/defendant herein on various grounds. The trial Court



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dismissed the said amendment petitions in I.A.Nos.5 of 2022 in O.S.No.129 of 2009 and I.A.No.6 of 2022 in O.S.No.159 of 2009. However, the trial Court dismissed the amendment petitions only on the ground that there is no consequential amendment in the Court fee column of the plaint regarding the proposed amended relief and the trial Court dismissed the amendment applications for non-payment of Court fee for the proposed amendment. Only on procedural irregularity, the trial Court dismissed the amendment applications. Hence, the revision petitioners filed the review petitions under Section 114 r/w Order 47 Rule 1 of CPC in Review Petition No.14 of 2023 in I.A.No.5 of 2022 and Review Petition No.10 of 2023 in I.A.No. 6 of 2022 to review the orders of the trial Court, mainly on the ground that the trial Court has power to collect the Court fee even in the final stage or as per Section 13 of the Tamil Nadu Court Fees and Suit Valuation Act 1955. The said review petitions were also dismissed by the trial Court on 17.03.2023 by stating that there is no error apparent on the face of records in the order passed in I.A.No.5 of 2022 and I.A.No.6 of 2022. The review applications were dismissed by the Special Court, Nagarcoil. Since the main cases were



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transferred to the said Court, as the subject matter on the issue is an Estate near Western Ghats. In such circumstances, the revision petitioners who are the plaintiffs in the above suits, aggrieved by the order of trial Court preferred the above revision petitions before this Court.

4.The learned Counsel appearing for the revision petitioners would contend that the trial Court ought to have considered the review petitions filed by the revision petitioners when sufficient reason attributed by the revision petitioner to review the orders passed by the trial Court in I.A.No.5 of 2022 and I.A.No.6 of 2022 filed in the above suits. He would further submit that the payment of Court fee arises only after the pleadings and the prayer column is amended for the proposed amendment in I.A.Nos.5 & 6 of 2022. The same cannot be rejected on the ground that there is no proposed amendment in Court fee column. He further asserted that the proposition of law that payment of Court fee is completely a procedural aspect of the Court, which adjudicates the issue between the litigant, and the same cannot be connected with the litigant. The random decision of the Court dismissing the



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above amendment petitions is unsustainable in law. The trial Court ought to have permitted the petitioners herein to amend the relief column in the plaint, ought to have directed the petitioners to pay the necessary Court fee within a stipulated time which is permissible under Order 6 Rule 18 of CPC read with the provisions of the Tamil Nadu Payment of Court Fees Act. The learned counsel further submitted that as per Section 13 of Tamil Nadu Court Fees and Suit Valuation Act of 1955, even at the stage of framing of issues, there can be payment of additional Court fee on the necessary issues framed in the suit. Such being the proposition of law, the approach of the trial Court in dismissing the review petition is incorrect. The learned counsel appearing for the revision petitioners would content that even any plea sought to be introduced by way of amendment, the same can be permitted, if no prejudice is caused to the other side. Therefore, the orders passed by the trial Court is liable to be set aside.

5.On the other hand, the learned counsel appearing for the respondents would content that, the suit is posted for cross examination of



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P.W.1 and at that stage, the said amendment petition cannot be maintained.

He would further contend that by filing the said amendment petitions, the petitioners are attempting to introduce a new plea, which cannot be permitted for the reason that it would change the nature of the suit. His further contention is that if such amendments are permitted the value of the subject matter would be increased and the Sub Court will not have jurisdiction to try. Moreover, the petitioners cannot be permitted to introduce the amendment without paying proper Court Fee. The above applications are filed belatedly and therefore, the trial Court has rightly rejected the applications filed by the petitioners.

6.Heard on both sides and records perused.

7.The revision petitioners as plaintiffs filed the suit in O.S.No.129 of 2009 on the file of the II Additional Sub Court, Nagarcoil in O.S.No.159 of 2009. During the pendency of the above suits, the revision petitioners filed two applications in I.A.Nos.5 and 6 of 2022 for amending the plaint



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schedule in pursuant to the report of the learned Advocate Commissioner.

According to the revision petitioners, the learned Advocate Commissioner was appointed as per the direction of this Court. The said Advocate Commissioner inspected the suit properties and filed a detailed report, in which he had mentioned the number of the fallen trees and its value which according to him was taken away by the defendants. Therefore, it has become necessary for the revision petitioners to amend the plaint schedule to include the value of the fallen trees in both the suits. However, the trial Court dismissed the above applications on the ground for non-payment of Court fee for the proposed amendment. Against which, the revision petitioner / plaintiffs filed the review petition Nos.10 &14 of 2023 dated, 17.03.2023, to review the order of the trial Court passed in I.A.Nos.5 and 6 of 2022 on the ground that the trial Court has power to collect the Court fee even in the final stage. However, the trial Court had dismissed the above applications on 17.03.2023 on the ground that there is no error apparent on the face of the record in the order passed in the above applications. Aggrieved by the same, the present revision petitions have been preferred.



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8. In the present case, the learned Advocate Commissioner has inspected the suit properties as per the direction of this Court who filed his report about the number of the fallen trees and its value. Even in the objections raised by the respondents, the said facts are not denied. Their only contention is that the amendment could not be permitted for the reason that if the said amendment is allowed, it would change the nature of the case and since the value of the suit itself would increase and the present Court will not have the jurisdiction to try the above suit. The next objections raised on the side the respondents is that without paying proper Court fee for the increased value, the suits cannot be maintained. On the question of payment of Court fee, as rightly pointed out by the learned counsel for the plaintiff, the trial Court can very well direct the parties to pay the necessary Court fee after such amendment is made. It is settled proposition of law that payment of Court fee is completely a procedural aspect between the Court and the litigant who seek the relief and the Court fee can be collected from the litigant even after the final adjudication. The trial Court ought to have considered the settled principle of law that payment of Court fee is only



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procedural aspect and on that ground, the relief cannot be rejected.

Moreover, all amendments of the pleadings should be allowed liberally which are necessary for determination of the real controversy in the suits, provided the proposed amendment does not alter or substitute a new cause of action in the suit on the basis of which, the original lis was raised or defence taken. The proposed amendment would not alter the nature of the case. It is only in continuance to the earlier relief sought in the plaint. Moreover, only when amendment sought for is time barred and changes the nature of the suit and the prayer for amendment is mala-fide and when the defendant loses the valid defence, such amendments can be rejected. While dealing with prayer for amendment of pleadings, Court should avoid hypertechnical approach. Therefore, all amendments which are necessary for determining the real question in controversy shall be allowed provided it does not cause injustice or prejudice to the other side.

9.In the present case by allowing the proposed amendment, no injustice or prejudice would be caused to the other side and therefore, the



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trial Court ought to have allowed the above applications. Hence, the order passed by the trial Court is set aside and in respect of jurisdiction, it is left to the trial Court to decide as to whether after such amendment, it has pecuniary jurisdiction to try the above suits.

10. With the above observations, these civil revision petitions stand allowed. No costs. Consequently, connected miscellaneous petitions are closed.

21.12.2023

vsn

NCC: Yes/No

Index: Yes/No

Speaking Order : Yes/No

To

1.The Additional Sub Judge, Nagercoil

2.The Special Judge(Rorest cases), Nagercoil

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K.GOVINDARAJAN THILAKAVADI,J.

vsn

**Pre-delivery common order made in
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