



CRP (MD) No.1134 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	09.08.2023
Pronounced on	29.09.2023

CORAM:

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

CRP (MD) No.1134 of 2023

and

CMP(MD)No.5438 of 2023

N.N.Swaminathan (died)

N.N.S.Palaniappan (died)

1.S.Nagammai

2.Umadevi

3.P.L.Meenakshi

... Petitioners

Vs.

1.SV.AR.VR.Veerapa Chettiar

2.VR.Alamelu Achi

3.VR.Lakshmanan

4.VR.Arunachalam

5.SV.AR.Uthaman Chettiar

6.O.Meenakshi Achi

7.O.Lakshmanan

8.O.Arunachalam

9.R.Maheswari



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10.PL.Vidhya

11.Shanthi

12.S.Meenakshi

13.P.L.Lakshmi

14.P.L.Nagu

15.P.L.Iswarya

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to call for the records relating to the fair and decreetal order dated 08.11.2022 passed in I.A.No.08 of 2021 in O.S.No.8 of 2012, on the file of the Additional District Court, Sivagangai and set aside the same.

For Petitioners : Mr.VR.Shanmuganathan

For R1 : Mr.S.Ramesh Kumar

For R3, R5 to R8 : Mr.S.Anand Chandrasekar

For R9 : Mr.S.Selva Adithya

For R2 : No appearance



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ORDER

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This Civil Revision Petition is preferred against the order dated 08.11.2022 passed in I.A.No.08 of 2021 in O.S.No.8 of 2012, on the file of the Additional District Munsif Court, Sivagangai.

2. The facts in brief are as follows:-

The above suit in O.S.No.08 of 2012 was filed by the deceased plaintiffs for specific performance. According to the revision petitioner, the suit property is a cinema theatre and the first defendant as a manager of the joint family of the defendants, agreed to sell the same for a sale consideration of Rs.14,50,000/- to the first plaintiff on 06.05.1987, which was initially an oral agreement. The first defendant had received a sum of Rs.1,00,000/- on the same day and further sum of Rs.6,00,000/- on 10.03.1988. The day on which the possession of the suit property was handed over to the first plaintiff, a power of attorney was also executed in favour of the first plaintiff. He would further submit that on 01.09.1989, a written sale agreement was executed on agreement that balance sale consideration shall be paid on or



before 31.03.1991 and in case of any delay, the plaintiff is liable to pay a sum of Rs.7,000/- per month towards the interest of the balance sale consideration of Rs.7,00,000/-. The first plaintiff started to run the cinema theatre which was also admitted by the first defendant before various authority like RDO, Municipality, Electricity Board, Public Works Department and Commercial Tax Officer, etc. Thereafter, the plaintiff paid various amounts towards the balance sale consideration as well as the interest for the delay payment running between the period 10.04.1988 and 13.08.2011 to the tune of Rs.18 lakhs. The first defendant had also made an endorsement in the sale agreement dated 01.09.1989, for the period from 24.02.1991 to 13.08.2011. Since the defendants failed to come forward to execute the sale deed inspite of several demands made by the plaintiffs, the plaintiffs issued a legal notice on 13.08.2011 and thereafter filed the above suit in O.S.No.08 of 2012 on the file of the Additional District Munsif Court, Sivagangai, for the relief of specific performance of the said agreement dated 01.09.1989. Pending the suit, the first plaintiff died and the second plaintiff, who is the son of the first plaintiff also died. Steps were taken to bring the legal heirs on record. On the other hand, the first defendant claiming that there was a



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partition effected between the family members and a portion of the suit property was allotted to him. He then executed a sale deed dated 07.02.2019 in favour of the 9th defendant to the suit. Thereafter, the 9th defendant was impleaded as a party in the suit. The 9th defendant attempted to trespass into the suit property and put up construction and therefore, the revision petitioner moved an application in I.A.No.02 of 2019 for injunction, which was granted on 13.03.2020. Another application in I.A.No.6 of 2020 was filed by the plaintiffs restraining the defendants from making further alienation and encumbrance in the suit property, which was allowed on 11.08.2021. However, inspite of the orders granted by the trial Court, the 9th defendant put up the construction in a portion of the suit property and thereby violated the interim order passed by the trial Court. Hence, it has become necessary to seek a mandatory injunction to remove the said construction and also to seek a declaration that the sale in favour of the 9th defendant is null and void and not binding the plaintiffs, by amending the plaint. Therefore, he filed an application in I.A.No.8 of 2021 under Order 6, Rule 16, 17 and Section 151 of CPC, to amend the plaint with regard to payment of Court fee under Section 25 (d) of the Tamil Nadu Court Fees and Suit Valuation Act and for



the relief of declaration declaring the sale deed dated 07.05.2019 executed by the defendants 2 to 8 in favour of the ninth defendant as null and void and not binding the plaintiffs and also for the relief of a mandatory injunction to demolish the construction put up by the ninth defendant illegally in the suit property in violation of the interim injunction granted by the trial Court. However, the trial Court dismissed the application filed by the revision petitioners by stating that the cause of action for the original suit and the proposed amendment, are different and that the doctrine of *lis pendens* will bind the subsequent purchasers and therefore, there is no need to seek for separate relief for each and every subsequent events. Aggrieved by this, the present revision is preferred by the petitioners.

3. The learned counsel appearing for the revision petitioners would submit that the suit filed by the revision petitioners is not a regular suit for specific performance based on a sale agreement simpliciter. Pursuant to the said agreement, the possession of the suit property was given to the revision petitioners and a power deed was also executed in their favour and almost the entire sale consideration was received by the first defendant and the first



defendant suppressing the said agreement, during the pendency of the suit, sold a portion of the suit property in favour of the 9th defendant. He would further submit that the relief sought for in the main suit by the plaintiffs is only for specific performance and that it is true that the suit cannot be amended on an assumption that the plaintiffs will be absolute owners based on mere possession of the suit property. At the same time, on completion of the present suit for specific performance, the plaintiffs will be under compulsion to undo the wrongs which are committed pending suit and in such case, any relief which will be sought for by the plaintiffs at that time would be patently barred by limitation and such course of action would only lead to multiplicity of proceedings. He would further contend that the present application for amendment would only avoid multiplicity of proceedings and also the plea of limitation at a later point of time, which, in the interest justice needs to be ordered. Further, a pre-trial amendment would not cause any prejudice to the other side and the same ought to be allowed by the trial Court.

4. The learned counsel for the revision petitioners would further submit



that the findings given by the trial Court that the intention of the petitioners is only to protract the proceedings is incorrect. Since the parties to the suit have died pending suit, the legal heirs have been brought on record and since the 9th defendant claims to have purchased the suit property on 19.05.2019, he was brought on record. He would further submit that the doctrine of *lis pendens* has no implication in the case on hand after the 9th defendant has been impleaded as party. It has become necessary to seek a relief against him. He would further submit that being a dominus litus, the plaintiff is entitled to seek any relief as against the parties to the suit whichever they required, more particularly, when it is a pre-trial amendment. Hence, he prays for setting aside the order passed by the trial Court by allowing the revision petition. To support his contention, he has relied upon the decisions reported in 2004 (5) SCC 772 and 2007 (0) AIR (Mad) 78.

5. On the other hand, the learned counsels appearing for the respondents 1, 3, 5 to 8 and 9 would contend that an application for amendment of the pleadings, should not be allowed as a matter of right. The revision petitioner must establish that inspite of due diligence, he could not



raise the matter before the commencement of trial. Hence, the trial Court has rightly rejected the petition filed by the revision petitioner, which calls for no interference.

6. Heard on both sides and records perused.

7. Order 6 Rule 17 of the amended CPC reads as follows:-

"17.Amendment of Pleadings.-- The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

Provided that no application for amendment shall be allowed after the trial has commenced unless the Court has come to the conclusion that inspite of the due diligence the party could not raised the matter before the commencement of trial"

8. As per the first part of the provision, the law permits a party to amend his pleadings which are essential for determining the real question in



controversy between the parties and as far as this part is concerned, the Courts have to liberally approach the matter. In so far as the second part viz., the proviso to the Rule is concerned, the trial Court shall not automatically or mechanically allow the amendment application when it is sought to be introduced after the commencement of trial and if the Court feels that it can be allowed, then it has to satisfy itself and furnish reasons as to the fact that the party, inspite of his due diligence, could not raise the matter anterior to the commencement of the trial. It is mandatory on the part of the Court while allowing the post trial amendments, to record the reasons as regards its satisfaction to the said aspect.

9. In the decision case referred by the learned counsel for the petitioners in Pankaja and others Vs Yellappa (D) by Lrs and Ors report in 2004 (5) Supreme 772, it is held as follows:-

So far as the Court's jurisdiction to allow an amendment of pleadings is concerned there can be no two opinion 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 the dominant purpose of allowing the amendment is to minimize the litigation, therefore, if the facts of the case so permits, it is always open to the court to allow applications in spite of the delay and latches in moving such amendment application. But the question for our consideration is whether in cases where the delay has extinguished the right of the party by virtue of expiry of the period of the period of limitation prescribed in law, can the court in the exercise of its discretion take away the right accrued to another party by allowing such belated amendments? The law in this regard is also quite clear and consistent that there is no absolute rule that in every case where a relief is barred because of limitation an amendment should not be allowed. Discretion in such cases depends on the facts and circumstances of the case. The jurisdiction to allow or not allow an amendment being discretionary the same will have to be exercised in a judicious evaluation of the facts and circumstances in which the amendment is sought. If the granting of an amendment really subserves the ultimate cause of justice and avoids further litigation the same should be allowed. There can be no straight jacket formula for allowing or disallowing an amendment of pleadings. Each case depends on the factual background of that case.



Therefore, an application for amendment of the pleading should not be disallowed merely because it is opposed on the ground that the same is barred by limitation, on the contrary, application will have to be considered bearing in mind the discretion that is vested with the Court in allowing or disallowing such amendment in the interest of justice.

10. Likewise in the decision case reported in **2007 0 AIR (MAD) 78** in the case of ***M/s.Hik.Sheet Industries Vs Litelon Limited and others***, it is held as follows:-

12. In the result, the reference is answered holding :

(1) that the delay in filing the application for amendment of the pleadings is not fatal when no serious prejudice is shown to have caused to the opposite party so as to take away any accrued right and the Court should take notice of the subsequent events in order to shorten the litigation to preserve and safeguard the rights of both the parties and to subserve the ends of justice and while doing so, the Court was not justified in allowing or disallowing the amendments so as to defeat the valuable rights of the parties and amendments of pleadings should be allowed which are



necessary for determination of the real controversy in the suit and while doing so, the Court should not go into the correctness or falsity of the main case and it should not record the finding on the merits of the amendment as it should be done only during the trial of the suit.

(2) According to the proviso to sub-section (2) of Section 40 of the Specific Relief Act, the Court has no option except to allow the amendment for adding a prayer for damages. This being the provision of law, the same should be allowed.

(3) The proviso to Order 6 Rule 17 of Act 22 of 2002 is applicable to the pleadings instituted with effect from 01.07.2002 and not to the pleadings instituted prior to 01.07.2002 and while considering the proviso to Order 6 Rule 17, the Court has to examine in detail and commencement of trial must be understood as final hearing of the suit i.e., examination of witnesses, filing of documents, addressing of arguments etc., and the Court should not forget its unfettered discretion to allow the amendment after applying itself the judicial discretion, if there is no negligence on the part of the party.

(4) Before parting with the decisions, we are tempted to cite a paragraph from a case Ma Shwe Mya v. Maung Mo Hnaung 21



"All rules of court are nothing but provisions intended to secure the proper administration of justice, and it is therefore essential that they should be made to serve and be subordinate to that purpose, so that full powers of amendment must be enjoyed and should always be liberally exercised, but nonetheless no power has yet been given to enable one distinct cause of action to be substituted for another, nor to change, by means of amendment, the subject-matter of the suit." (emphasis supplied).

11. Though the suit is of the year 2013, during the pendency of the suit, the plaintiffs 1 and 2 have died and the legal heirs were brought on record. Thereafter, on 19.05.2019, 9th defendant had purchased a portion of the suit property and the petitioners have filed an application to implead him as necessary party and also interim applications to restrain the defendants from encumbering the suit property. Therefore, the delay cannot be attributed to the petitioners herein. Since the 9th defendant has been impleaded in the suit, the plaintiffs is entitled to seek any relief as against him and more particularly, when the trial of the suit is yet to be commenced. Therefore, keeping the above principle, the Court of law has to dispense the justice.



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Accordingly, the impugned order disallowing the amendment is liable to be set aside.

12. In the result, this Civil Revision Petition is allowed and the impugned order dated 08.11.2022 passed in I.A.No.08 of 2021 in O.S.No.8 of 2012, on the file of the learned Additional District Judge, Sivagangai is set aside and the same is allowed. Since the suit is of the year 2013, the trial Court is directed to dispose the suit within a period of three months from the date of receipt of a copy this order, as already there is a considerable delay by now. No costs. consequently, connected miscellaneous petition is closed.

29.09.2023

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

The Additional District,
Sivagangai.

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Pre-delivery order made in
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