

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.08.2023

CORAM

**THE HONOURABLE MRS JUSTICE K. GOVINDARAJAN
THILAKAVADI**

C.R.P(MD)No.1194 of 2021
and
C.M.P(MD)No.6912 of 2021

C.Anusuha

... Petitioner/Petitioner/
Plaintiff

Vs.

1.P.Chandrasekar
2.C.Nirmala Devi
3.Tamil Nadu Newsprint and Papers Limited,
Rep by its General Manager,
Mondipatti, Unit 115,
Manapparai Taluk,
Trichy District.

4.R.Karnan

5.R.Nirmala Devi

... Respondents/Respondents/
Defendants

Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 26.03.2021 in I.A.No. 5 of 2020 in O.S.No.35 of 2019 on the file of the I Additional District Judge (PCR), Tiruchirappalli.

For Petitioner
For R3
For R1, R2&R4

:Mr.Raguvaran Gopalan
:Mr.M.P.Senthil
:No appearance

ORDER

This civil revision petition is filed against the fair and decreetal order dated 26.03.2021 passed in I.A.No.5 of 2020 in O.S.No.35 of 2019 by the I Additional District Judge (PCR), Tiruchirappalli.

2.According to the revision petitioner/plaintiff, he has filed the suit in O.S.No.35 of 2019 for declaring the settlement deed, dated 17.07.2018 executed by the first defendant in favour of the second defendant is null and void and for recovery of amount. During the pendency of the said suit, the petitioner has filed an application in I.A.No.5 of 2020 to amend the plaint for transposing the properties in 'A' schedule property as 'B' schedule property for including certain properties which were left out in spite of due diligence, the petitioner, due to her age, was unable to trace out the existence of the above properties. However, the trial Court, without considering the above facts, has dismissed the application on the ground that the proposed properties in the settlement deed was not mentioned in the schedule and the petitioner did not give any valuation of the newly added properties in her petition and there is no cause of action arose for adding the proposed properties. Further, it was belatedly filed and the proposed properties were not mentioned in the plaint. Hence, the present civil revision petition is filed.

3.The learned counsel appearing for the revision petitioner would submit that it is settled law that an amendment to the plaint can be permitted even after commencement of trial. He would further submit that the conditions that have to be met for such amendments have been decided by the Hon'ble Apex Court in *Rejaveetu Builders & Developers v.Narayanaswamy & Sons* (2009) 10 SCC 84 at Para 63 and are as follows:

"63. On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment.

(1) Whether the amendment sought is imperative for proper and effective adjudication of the case?

(2) Whether the application for amendment is bona fide or mala fide?

(3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(4) Refusing amendment would in fact lead to injustice or lead to multiple litigation;

(5) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case? (6) As a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application."

4.The learned counsel appearing for the petitioner would submit that the trial Court failed to note that by including proposed properties there is no alteration in the nature of the suit or change in the cause of action. In other words, it would ensure complete and comprehensive adjudication of the lis. The learned counsel would further submit that the petitioner/plaintiff filed the suit at the age of 21, when she was deserted by her father/ the first defendant and did not have any source to gather all the details required within the period of limitation. The petitioner/plaintiff has filed the suit to declare the settlement deed, dated 17.07.2018 as null and void and even after the properties are included by way of amendment. He would further submit that the petitioner/plaintiff has filed an application in I.A.No.1 of 2019 along with the suit under Order 2 Rule 2 of C.P.C., seeking permission to file a suit for partition at later point of time.

5.While so, the trial Court erred in dismissing the application on the ground that the property sought to be included as 'A' schedule property are not mentioned in the settlement deed. The learned counsel would further submit that the amendment is sought to be made to include properties under 'A' schedule as it is the case of the plaintiff that 'B' schedule properties were purchased from the income derived from the 'A' schedule properties which are ancestral in nature. It is not the case of the plaintiff that 'A' schedule

properties have been settled under the settlement deed. The learned counsel would further submit that the relief of declaration has been valued under Section 25(b) of the Court Fee Act and the Court Fee has been paid on the fixed value which the trial Court failed to appreciate the inclusion of the ancestral properties in 'A' schedule or transposition of properties to 'B' schedule would not have any bearing on the valuation of the relief. He would further submit that the trial Court, without considering the above facts, dismissed the I.A. Hence, the present civil revision petition is filed.

6.Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the third respondent and perused the materials available on record.

7.The learned counsel appearing for the third respondent appeared. Despite service of notice, R1 to R3 remained absent.

8.Admittedly, the petitioner is the plaintiff in the suit. It is the suit for declaring the settlement deed, dated 17.07.2018 as null and void and for recovery of amount. The specific plea taken by the petitioner/plaintiff in the I.A.No.5 of 2020 is that the petitioner was not aware of the fact that certain properties were purchased from the nuclear of the ancestral properties at the

time of filing the suit. Only after examination of P.W.1/petitioner, in the petition filed I.A.No.5 of 2021, that 'A' schedule properties are the ancestral properties of one Palaniyandi Gounder. However, by a mistake in the description of the property wrongly mentioned that item Nos.1 and 2 in 'A' schedule properties are ancestral properties. On the other hand, the properties mentioned in the petition alone are the ancestral joint family properties. It is further submitted that from the income derived from the petition mentioned properties, more properties were purchased by the family. Since the petitioner was hardly 21 years at the time of filing the suit and as the family members have alienated the properties, she was forced to file the suit on the basis of available records. Due to Pandemic Covid-19, she could not search the records at the time of her examination as P.W.1. She would further submit that the petition mentioned properties are ancestral properties of the family and in spite of due diligence, she could not find out the nature of the properties. Hence, in the suit, with her little knowledge she had mentioned that the properties in the 'A' schedule are ancestral in nature only at later point of time, she came to understand that only the petition mentioned properties are ancestral in nature. Therefore, it is necessary to include the petition mentioned properties in the plaint schedule to establish that the properties covered under the settlement deed, dated 17.07.2018 are not the self acquired properties of the first defendant and they are purchased

out of the income derived from the ancestral properties. The petitioner also submitted that it is necessary to bring out the existence of the ancestral properties and by amending the plaint, no prejudice would be caused to the other side. Therefore, the proper amendment ought to be permitted by the trial Court.

9.Considering the facts and circumstances of the case, the trial Court ought to have allowed the amendment sought by the petitioner/plaintiff for having a proper and effective adjudication of the case. In the present case, the petitioner/plaintiff by way of including the proposed properties intend to establish that the properties mentioned in the settlement deed are not the self acquired property of the first defendant and they are the purchased by the income derived from the ancestral properties, and therefore, the proposed properties which are the ancestral in nature, are necessarily to be included. Therefore, there is no malafide intention on the part of the petitioner/plaintiff in seeking the proposed amendment. No way it would cause prejudice to the other side and in fact, by receiving the said amendment it would only cause injustice to the petitioner and also lead to multiple litigation. Moreover, the said amendment to add certain properties to 'A' schedule which was already described in the plaint as ancestral properties. Moreover the plaintiff is not seeking any relief in the 'A' schedule property and according to the petitioner/plaintiff 'A' schedule

properties are shown only to establish the existence of ancestral properties. Moreover, the amendment sought by the petitioner/plaintiff for transposing the two items of 'A' schedule to 'B' schedule would not change the character of the suit or valuation as stated by the learned counsel appearing for the petitioner herein.

10.The mere relief in the suit is to declare the settlement deed dated 17.07.2018 is null and void and not binding on the plaintiff and the properties mentioned in the settlement deed as described as 'B' schedule properties in the suit. Therefore, by adding or removing the properties from the schedule of the suit will not alter the valuation of the properties mentioned in the suit. Moreover, it is settled principle that the amendment should be allowed liberally, to prevent multiplicity of litigation and to have proper and effective adjudication of the case. Therefore, the impugned order dated 26.03.2021 passed in I.A.No.5 of 2020 in O.S.No.35 of 2019 by the I Additional District Judge (PCR), Tiruchirappalli, is set aside and the Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

22.08.2023

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

To

- 1.The I Additional District Judge (PCR),
Tiruchirappalli.
- 2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

K.GOVINDARAJAN THILAKAVADI, J.

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