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C.R.P.(MD)Nos.1830 and 1831 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.04.2023

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P.(MD)Nos.1830 and 1831 of 2022

and

C.M.P.(MD)Nos.8236 and 8237 of 2022

- 1.Pappu @ Karuppayee
- 2.S.Manimaran
- 3.S.Nedumaran
- 4.S.Thirumaran
- 5.S.Sukumaran
- 6.S.Elamaran
- 7.B.Mangayarkarasi
- 8.K.Rani
- 9.Minor R.Karnam
[Through his mother and guardian
12th plaintiff Muthumari]
- 10.V.Thangarasu
- 11.V.Nachammal
- 12.R.Muthumari

.. Petitioners in both the C.R.Ps.

Versus

- Gnanamaniammal (Died)
- 1.Thiagarajan
 - 2.Muthuvel
 - 3.Shanmugavel
 - 4.Thiruthani
 - 5.Mari
 - 6.Umadevi
 - 7.K.Mani @ Veeranan
 - 8.K.Thangasamy

.. Respondents in both the C.R.Ps.

Prayer in both the C.R.Ps. :- Petitions filed under Article 227 of the Constitution of India, against the fair and decretal order dated 23.06.2022, passed in I.A.Nos.4 and 5

<https://www.mhc.tn.gov.in/judis>



C.R.P.(MD)Nos.1830 and 1831 of 2022

of 2022 in O.S.No.2 of 2017, on the file of the Additional District Munsif, Aruppukottai, respectively.

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For Petitioners : Mr.S.Sukumar
(in both the C.R.Ps.)

For R1 : Mr.S.Selva Aditya
(in both the C.R.Ps.)

For R2 to R8 : No Appearance
(in both the C.R.Ps.)

COMMON ORDER

Since the issues involved and the parties in both the Civil Revision Petitions are one and the same, these Civil Revision Petitions are disposed of by this common order.

2. In these Civil Revision Petitions, the petitioners are aggrieved by the separate impugned orders, dated 23.06.2022, passed in I.A.Nos.4 and 5 of 2022 in O.S.No.2 of 2017, respectively.

3. By the impugned orders, the learned Additional District Munsif, Aruppukottai, has dismissed the applications filed by the petitioners, for receiving the reply statement filed under Order VIII Rule 9 of C.P.C. and for amending the prayer to declare the sale deeds, dated 18.03.1961 and 11.01.1962, as null and void. The operative portion of the impugned orders, dated 23.06.2022, passed in both I.A.Nos.4 and 5 of 2022 are identical. They are re-produced as below:-



I.A.No.4 of 2022	I.A.No.5 of 2022
10. In the present petition, the petitioners have very well known regarding the execution of sale deeds dated 18.03.1961 and 11.01.1962 at the time of filing of written statement by the respondent/defendant as on 07.08.2017. Thereafter, if the petitioner really had grievance over the said documents, there are lot of chances to peruse the same. But, the petitioners have not taken any steps to peruse the documents and have not filed any other petition before this court. Further. during the cross-examination of the PWI dated 17.04.2021 also cross-examination was made with respect to the said documents but even at the said stage, the petitioner has not come forward with this petition. After the commencement of evidence on the side of defendants, after seeking time for cross-examination several times, the present petition has been filed along with amendment petition by changing the counsel on record. The petitioners have not stated any valid reason as to why the petition for filing of reply statement has not been filed before the commencement of trial, though the knowledge of sale deeds dated 18.03.1961 and 11.01.1962 were very well known to them at the time of filing of written statement. The suit is of the year 2017 and the defendant side evidence is in progress. Hence, this court finds no valid reason for filing of this petition by introducing new facts, even though the petitioners are very well aware of the proceedings. Therefore, in the interest of justice, this Court finds no merits in this petition filed at this stage and the petition is liable to be dismissed.	10. In the present petition, the petitioners have very well known regarding the execution of sale deeds dated 18.03.1961 and 11.01.1962 at the time of filing of written statement by the respondent/defendant as on 07.08.2017. Thereafter, if the petitioner really had grievance over the said documents, there are lot of chances to peruse the same. But, the petitioners have not taken any steps to peruse the documents and have not filed any other petition before this court. Further. during the cross-examination of the PWI dated 17.04.2021 also cross-examination was made with respect to the said documents but even at the said stage, the petitioner has not come forward with this petition. After the commencement of evidence on the side of defendants, after seeking time for cross-examination several times. the present petition has been filed along with reply statement by changing the counsel on record. The petitioners have not stated any valid reason as to why the petition for amendment has not been filed before the commencement of trial, though the knowledge of sale deeds dated 18.03.1961 and 11.01.1962 were very well known to them at the time of filing of written statement. The suit is of the year 2017 and the defendant side evidence is in progress. Hence, this court finds no valid reason for filing of this amendment petition by introducing new facts in the plaint even though the petitioners are very well aware of the proceedings. Therefore, in the interest of justice, this Court finds no merits in this petition filed at this stage and the petition is liable to be dismissed.



4. It is submitted that though the documents that were sought to be introduced and referred in the written statement were mentioned, they were not filed by the respondents/defendants. It is submitted that the respondents/defendants filed I.A.No. 1 of 2021 to mark two parent sale deeds, dated 18.03.1961 and 11.01.1962 and the said I.A. was allowed. Thereafter, these documents were marked at the time of examination of the defendants' side witnesses. Therefore, it is submitted that the first chance to object by the petitioners was after I.A.No.1 of 2021 being filed and allowed by the Court.

5. In support of his submissions, the learned counsel for the petitioners relied on a recent decision of the Hon'ble Supreme Court in **Life Insurance Corporation of India vs. Sanjeev Builders Private Limited** reported in AIR 2022 SC 4256. A reference is made to Paragraph No.70 of the said judgment, which reads as under:-

"70. Our final conclusions may be summed up thus:

(i) Order II Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview. The plea of amendment being barred under Order II Rule 2 CPC is, thus, misconceived and hence negatived.

(ii) All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word "shall", in the latter part of Order VI Rule 17 of the CPC.



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- (iii) *The prayer for amendment is to be allowed*
- (i) *if the amendment is required for effective and proper adjudication of the controversy between the parties, and*
- (ii) *to avoid multiplicity of proceedings, provided*
- (a) *the amendment does not result in injustice to the other side,*
- (b) *by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and*
- (c) *the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).*
- (iv) *A prayer for amendment is generally required to be allowed unless*
- (i) *by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration,*
- (ii) *the amendment changes the nature of the suit,*
- (iii) *the prayer for amendment is malafide, or*
- (iv) *by the amendment, the other side loses a valid defence.*
- (v) *In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.*
- (vi) *Where the amendment would enable the court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.*
- (vii) *Where the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation.*
- (viii) *Amendment may be justifiably allowed where it is intended to*



rectify the absence of material particulars in the plaint.

(ix) Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.

(x) Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.

(xi) Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed. (See Vijay Gupta v. Gagninder Kr. Gandhi, 2022 SCC OnLine Del 1897)"

6. Defending the impugned order, the learned counsel for the first respondent submits that any amendment to the prayer would result in extending the limitation and therefore, it cannot be permitted. The learned Additional District Munsif,



Aruppukottai, has correctly rejected the applications filed by the petitioners. That apart, it is submitted that in the written statement, which was filed on 07.08.2017, at Paragraph No.3 a categorical reference was made to both the documents and therefore, nothing precluded the petitioners from filing such applications at an early stage.

7. It is further submitted that even though the documents were not filed along with the written statement, leave has been obtained in I.A.No.1 of 2021 and therefore, merely because leave has been obtained subsequently, *ipso facto* would not entitle the petitioners to seek leave for filing additional statement under Order VIII Rule 9 of C.P.C. or seek amendment of the prayer.

8. I have considered the arguments advanced by the learned counsel for the petitioners and the learned counsel for the first respondent and also perused the impugned orders passed by the learned Additional District Munsif, Aruppukottai.

9. In my view, the Trial Court has not justified in rejecting the applications filing for receiving the reply statement and for amending the prayer. If the amendment is allowed, it is always for the respondents to raise objections on the issue of limitation at the time of final hearing. Admittedly, the documents were also marked by the respondents at an early stage. As per Order VIII Rule 1-A of C.P.C., a



duty was cast upon the respondents/defendants to produce documents upon which relief is claimed or relied upon by them in Court when the written statement is presented by them. This was not complied with by the respondents and therefore, they filed I.A.No.1 of 2021 and the same has been allowed, which paved the way for marking of the two sale deeds, dated 18.03.1961 and 11.01.1962.

10. Therefore, the impugned orders dated 23.06.2022, passed in I.A.Nos.4 and 5 of 2022 in O.S.No.2 of 2017, declining the reliefs are liable to be interfered and set aside. Accordingly, the reliefs sought in I.A.Nos.4 and 5 of 2022 are allowed. The Trial Court is directed to receive reply statement of the petitioner and also allow the amendment sought for. The Trial Court shall thereafter proceed with the trial and pass a judgment and decree in the above said suit as expeditiously as possible, preferably, within a period of six months from the date of receipt of a copy of this order. Needless to state, it is left open for the respondents to canvass all the points relating to limitation before the Trial Court.

11. These Civil Revision Petitions stand allowed with the above observation and direction. No costs. Consequently, connected Miscellaneous Petitions are closed.

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
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11.04.2023



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To

The Additional District Munsif,
Aruppukottai.



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C.SARAVANAN, J.

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Common Order made in
C.R.P.(MD)Nos.1830 and 1831 of 2022

11.04.2023