



C.R.P(MD)No.1425 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 26.04.2023
DELIVERED ON : 01.06.2023

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.R.P(MD)No.1425 of 2014
and
M.P(MD)No.1 of 2014

1.Krishnamoorthy (Died)
2.K.Ramesh
3.Sudha Ramesh

... Petitioners

Vs.

1.K.Sundaresan
2.Sowdamini @ Sudha Sundaresan
3.K.Bala

... Respondents

(Third respondent is brought on record as legal heir of the deceased first petitioner vide Court order dated 02.03.2023 made in C.M.P(MD)No.10352 of 2021 in C.R.P(MD)No.1425 of 2014)

PRAYER : Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order in I.A.No.74 of 2012 in O.S.No.88 of 2011 dated 14.03.2014 on the file of the III Additional District Judge, Trichy.



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For Petitioners : Mr.S.Madhavan

For R-1 & R-2 : Mr.A.R.M.Ramesh

For R-3 : No Appearance

ORDER

This Civil Revision Petition is preferred as against the fair and decreetal order passed in I.A.No.74 of 2012 in O.S.No.88 of 2011 dated 14.03.2014 on the file of the III Additional District Judge, Tiruchirapalli. The suit in O.S.No.88 of 2011 was one for partition. The suit was filed on 08.06.2011. The plaintiffs and the defendants belong to the same family. The second plaintiff and the first defendant are the sons of the first plaintiff and the third plaintiff and the second defendant are the daughters-in-law of the first plaintiff. The third plaintiff is the wife of the second plaintiff and the second defendant is the wife of the first defendant respectively. For the sake of convenience, the parties herein are referred to as arrayed in I.A.No. 74 of 2012 in O.S.No.88 of 2011.

2. The first defendant in his written statement had pleaded that in his capacity as the power agent of plaintiffs 1 to 3, he has sold out the plaint schedule property to the second defendant by means of a registered sale

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deed dated 12.05.2010 in the office of Sub Registrar, K.Saathanur, Trichy.

The same was similarly pleaded by the second defendant in paragraph No. 13 of her written statement as well. In view of the same, the plaintiffs have filed I.A.No.74 of 2012 in O.S.No.88 of 2011 under Order VI, Rule 17 of the Code of Civil Procedure, 1908 seeking to amend the plaint as well as to include an additional prayer to set aside the sale deed in favour of the second defendant bearing document No.2001 of 2010 in the office of Sub Registrar, K.Saathanur, Trichy dated 12.05.2010. Both the defendants filed counter to the said interlocutory application. On merits, the learned Trial Court was pleased to dismiss the said interlocutory application and the operative portion of which is extracted as follows:

7. Point: Orders passed. The petitioner prays for an amendment originally the suit is filed for partition. Even in the plaint, the General power of attorney has been mentioned. It is subsequently stated that the same was cancelled. Even if so, during existence of power if any transaction took place, the plaintiff's as Principals can ask for accounts from first respondent.

The amendments sought for are entirely different and go to the root of the nature of the suit itself. Such an amendment cannot be allowed. Hence this petition is dismissed with costs."



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Assailing the said order, the revision petitioners / petitioners / plaintiffs are before this Court by way of this Civil Revision Petition.

3. Heard the learned Counsels for the petitioners as well as the first and second respondents anxiously and carefully perused the materials available on record. The learned Counsel for the petitioners took me through the various grounds of this Civil Revision Petition and the other documents which he relied upon.

4. Refuting each and every argument placed before me by the learned Counsel for the petitioner, the learned Counsel for the respondent vehemently argued that this Civil Revision Petition is liable to be dismissed. The amendment sought for by the petitioner is nothing but the same is another prayer in addition to the relief of partition, to set aside the sale deed in favour of the second respondent / second respondent / second defendant along with related amendments in few paragraphs of the plaint.



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5. The primordial question which has to be decided here is whether the amendments sought for are entirely different and goes to the root of the nature of the suit itself, as held by the Trial Court?

6. My formidable answer is No. While deciding the application for amendment of plaint, the learned Trial Court refused *bona fide*, legitimate, honest and necessary amendments. Amendments are allowed in pleadings to avoid multiplicity of litigations. This is a suit for partition between the siblings of the first plaintiff (died) and the amendment sought for arose from the submission made by the defendants in their written statement with respect to the sale of the plaint schedule property by the first defendant in favour of the second respondent, by the strength of a power of attorney executed by the plaintiffs in favour of the first defendant. It is well settled under Order VI, Rule 17 of the Code of Civil Procedure, 1908 that unfettered power of discretion is conferred on the Courts to allow amendment of pleadings to a party at any stage of proceedings in such a manner and on said terms as may be just for the purpose of determining the real questions in controversy between the parties. Precisely, Order VI, Rule 17 of the Code of Civil Procedure, 1908 consist of two parts, namely, the



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first part which is discretionary, leaves it to the Court to order amendment of pleadings whereas, the second part is imperative which empowers the Court to allow all amendments which are necessary for the purposes determining the main question in controversy between the parties.

7. The Hon'ble Supreme Court of India in a judgment reported in **2006 (4) SCC 385 (Rajesh Kumar Aggarwal and Others Vs. K.K.Modi and Others)** dated **22.03.2006** in paragraph No.17 has held as follows:

“17. In our view, since the cause of action arose during the pendency of the suit, proposed amendment ought to have been granted because the basic structure of the suit has not changed and that there was merely change in the nature of relief claimed. We fail to understand if it is permissible for the appellants to file an independent suit, why the same relief which could be prayed for in the new suit cannot be permitted to be incorporated in the pending suit.”

8. However, in this case, the relief sought for neither changes the nature of relief claimed nor the crux of the issue. Admittedly, without asking for substituting the relief for partition with the relief to set aside the sale



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deed in favour of the second defendant, the relief sought for by the petitioners herein is to insert an additional relief to set aside the sale deed in favour of the second defendant in addition to the relief of partition. Moreover, the proviso to Order VI, Rule 17 of the Code of Civil Procedure, 1908 makes it clear that there is no embargo in allowing any pre-trial amendments. Here in this case, the interlocutory application in I.A.No.74 of 2012 in O.S.No.88 of 2011 has been preferred by the revision petitioners as soon as the written statement was filed by both the defendants, before the commencement of the trial. The learned Trial Court ought not to have held that the amendment sought for are entirely different and has gone to the root of the nature of the suit without any basis.

9. The admitted facts and circumstances set out by the plaintiffs and defendants in their respective pleadings would make it clear that the first defendant, who is the brother of the second plaintiff has executed a sale deed with respect to the scheduled property, which is the family property of both the second plaintiff and the first defendant, in favour of the second defendant, who is his wife without the knowledge of the plaintiffs, by the strength of the power of attorney executed by the plaintiffs in favour of the



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first defendant. In a suit for partition, in the pre-trial stage without elucidating any facts as to the execution of the power of attorney by the plaintiffs in favour of the first defendant and the circumstances under which the first defendant executed a sale deed in favour of his wife with respect to the plaint schedule property, the Trial Court ought not to have held in an order passed in an interlocutory application stating that the transaction which took place during the existence of power of attorney would make the plaintiff entitled only to seek rendition of accounts. Such a pre-trial conclusion by the learned Trial Court is precisely illegal and is liable to be set aside.

10. The Hon'ble Supreme Court of India in a judgment reported in ***[MANU/SC/1093/2022] in Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited and Another*** dated **01.09.2022** in paragraph No.70 has held as follows:

“70.(iii) The prayer for amendment is to be allowed

(i) if the amendment is required for effective and proper adjudication of the controversy



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*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.*



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(vi) *Where the amendment would enable the court to pinpointedly 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*



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*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 and Ors.*, MANU/DE/2236/2022)”*

11. In view of the above, I am of the considered view that the amendment has been sought in this case before the commencement of the trial and is necessary to be allowed to avoid multiplicity of proceedings and for the effective and proper adjudication of the controversy between the siblings of the same family. The Trial Court has gravely erred by dismissing the amendment application observing that the amendment sought for changes the nature of the suit hypothetically in a pre-trial stage. It is settled law that the merits of the amendment sought to be incorporated by way of amendment should not be adjudged at the stage of allowing or dismissing the prayer for amendment.



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12. In view of the above discussions, the impugned order passed by the learned III Additional District Judge, Tiruchirappalli in I.A.No.74 of 2012 in O.S.No.88 of 2011 dated 14.03.2014 is hereby set aside. In the result, this Civil Revision Petition stands allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

01.06.2023

NCC : Yes
Index : Yes
Internet : Yes
BTR

To

- 1.The III Additional District Judge,
Trichy.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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L.VICTORIA GOWRI, J.

BTR

Order made in
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