



C.R.P.(MD)No.1777 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

C.R.P.(MD)No.1777 of 2019

and

C.M.P.(MD)No.9198 of 2019

1. Arjunraj

2. Krishnaraj

3. Dharmaraj

4. Palvarnaraj

... Petitioners/
Petitioners/
Plaintiffs

Vs.

1. Vijayakumari

2. John Ebanesar

... Respondents/
Respondents/
Defendants

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order and decretal order dated 26.08.2019 in I.A.No.654 of 2018 in O.S.No.4 of 2011 on the file of Principal District Munsif, Padmanabhapuram and allow the civil revision petition.

For Petitioners : Mr.G.Cenil

For Respondents : Mr.D.Srinivasa Raghavan
for Mr.B.Christopher



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ORDER

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The instant Civil Revision Petition has been filed by the petitioners under Article 227 of the Constitution of India, against the order dated 26.08.2019, made in I.A.No.654 of 2018, in O.S.No.4 of 2011, on the file of the Principal District Munsif, Padmanabhapuram.

2. The learned counsel appearing for the revision petitioners would fairly submit that the suit has been dismissed for default for twice, and he would also submit that previous two amendment applications have already been allowed, and the instant amendment has been moved to amend the plaint so as to amend the prayer by incorporating certain words and also to amend the pleading.

3. The learned counsel appearing for the respondents would submit that though the suit was initially filed during the year 2008, it has been transferred to Padmanabhapuram and even prior to the present amendment application, two amendment applications have been allowed and this amendment application has been filed after the cross-examination of P.W.1. Therefore, there is no due diligence on the part of the revision petitioners. Hence, he prayed to dismiss this petition.



4. I have given my anxious consideration to the either side submissions.

5. The one and the only ground put forth by the revision petitioners for seeking amendment is that, the amendment sought for will not change the character of the suit and has not introduced new cause of action and the said amendment would become necessary for fair adjudication. This Court is of the clear view that having the suit been pending for the period of more than 10 years, moving an amendment application after the commencement of trial should be viewed very seriously.

6. In this regard, it is relevant to refer to the judgment of the Hon'ble Supreme Court reported in **2022-SCC-Online-SC-1128 (Life Insurance Corporation of India V. Sanjeev Builders Private Limited)**.

The relevant portion of the judgment is as follows:

“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.

(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 & Ors., 2022 SCC OnLine Del 1897)”

7. As per the above ruling, the Hon'ble Supreme Court has held that when the amendment sought for is, change the character of the suit and when affects other sides' valid defence, the amendment should not be



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allowed. Besides, if any amendment after the commencement of trial, there is a duty last up on the person to show due diligence as per the proviso of Order 6 Rule 17.

8. While considering the affidavit, this Court could not find any due diligence of the revision petitioners. Furthermore, the Court below also has found that there is no reason for not filing the amendment application, before the commencement of trial.

9. From the submissions made by the learned counsel appearing for the revision petitioners, this Court is not in a position to deviate from the well considered finding of the Court below. From the perusal of the order of the Court below, this Court finds no infirmity. Therefore, this Court is of the view that there is no merit in the Civil Revision Petition.

10. In the result, this Civil Revision Petition stands **dismissed**. There shall be no order as to cost. Consequently, connected Miscellaneous Petition is closed.

20.09.2023

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



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C.KUMARAPPAN, J.

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To

- 1.The Principal District Munsif,
Padmanabhapuram.
- 2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

ORDER MADE IN

C.R.P.(MD)No.1777 of 2019

and

C.M.P.(MD)No.9198 of 2019

Dated : 20.09.2023