



C.R.P.(MD)No.1842 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 11.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

C.R.P.(MD)No.1842 of 2019

and

C.M.P.(MD)No.9468 of 2019

1.Anthonymmal Mankayarkarasi

2.Babu Janakiram

Sureshvannamuthu (Died) ... Petitioners / Petitioners/Plaintiffs

Vs.

M.M.Ahamed ... Respondent / Respondent/Defendants

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, against the order and decree, dated 05.09.2018, passed in I.A.No.476 of 2018, in O.S.No.301 of 2013, on the file of the Additional District Munsif, Tenkasi, Tirunelveli District.

For Petitioners : Mr.B.Prahald Ravi

For Respondent : Mr.M.P.Senthil

ORDER

The instant Civil Revision Petition has been filed against the order, dated 05.09.2018, passed in I.A.No.476 of 2018, in O.S.No.301 of 2013, on the file of the Additional District Munsif, Tenkasi.



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2. The revision petitioners herein are the petitioners /plaintiffs and the respondent herein is the respondent /defendant before the Court below.

3. For the sake of convenience, the parties are referred to according to their litigative status before the Court below.

4. It appears that the plaintiffs have filed an application for the relief of permanent injunction in the year of June 2013. The said suit was resisted by the defendants by filing written statement during 2013 itself. In the written statement, the defendants have also sought for a counter claim that the second schedule property is the public passage. In the meanwhile, the defendants moved an application for amendment during 03.08.2018, so as to remove the encroachment made in the public passage. The said submission was resisted by the plaintiffs by contending that they did not put up any construction during the pendency of the suit, and that the alleged construction has already been constructed, even prior to filing of the suit, therefore, prayed to dismiss the amendment application.



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5. However, the Court below has allowed the application on the ground that though the plaintiffs have contended that the construction were exist, prior to the filing of the suit, such disputed fact could only be effectively gone into during trial. Therefore, the Court below has allowed the application.

6. Aggrieved with the said finding, the plaintiffs have approached this Court by way of this Civil Revision Petition.

7. It is the submission of the learned counsel for the plaintiffs that the amendment sought for is after a period of 6 years from the date of construction, and that since there are no material *prima facie* available prove the existence of the such encroachment, the trial Court ought not to have allowed the application.

8. Per contra, the learned counsel for the defendant in their affidavit, have categorically stated that the plaintiffs have put up construction subsequent to the filing of the written statement, and that



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he came to know about the such encroachment belatedly, as he never visited the village on account of his wife's ill health, therefore, he would submit that the application for amendment is within the limitation.

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

10. It is pertinent to mention here that, the Hon'ble Supreme Court on consideration of whole gamut of legal position, in respect of Order 6 Rule 17 of C.P.C., has given it's final conclusion in paragraph No.70 of the judgment reported in ***2022-SCC-Online-SC-1128 (Life Insruacne 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 negated.



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(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*



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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*



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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)”

(Emphasis supplied by this Court)



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11. The Hon'ble Supreme Court after elaborately gone into the various precedents and provisions of Specific Relief Act and Code of Civil Procedure, has ultimately laid down the conclusion as above. As per the ratio of the Hon'ble Supreme Court, when ever the amendment is necessary for determining the real question of controversy and that when the same does not prejudice the case, then the amendment generally required to be allowed, unless the amendment is time barred, and changes the nature of the suit.

12. While keeping the above ratio in the mind, if we look at the facts of this case, here the defendant contends that during the pendency of the suit, such an encroachment came into existence and the he moved an application within a period of limitation from the date when we first came to know about the such encroachment.

13. It is the submission of the defendant that he came to know about such encroachment recently, as he was away from the suit property. The above factum was disputed by the plaintiffs. As rightly



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observed by the Court below, unless the amendment is permitted, the real question of controversy could not be decided effectively. Though the question of limitation lingering in such amendment that also can be effectively answered during the disposal of this case.

14. Therefore, this Court is of the firm view that the plaintiffs did not put forth any positive grounds so as to interfere with the order of the well considered order.

15. In the result, the instant Civil Revision Petition stands **dismissed**, by confirming the order of the Court below. There shall be no order as to cost. Consequently, connected Miscellaneous Petition is closed.

11.09.2023

NCC : Yes/No
Index : Yes/No
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C.KUMARAPPAN.,J.

Ls

To

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

Order made in

C.R.P(MD)No.1842 of 2019

11.09.2023