



CRP(MD)No.1118 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

CRP(MD)No.1118 of 2018
and
CMP(MD)No.4810 of 2018

C.Arumugam : Petitioner

Vs.

1.Chinnakaruppan

2.Rajendran : Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to call for the records relating to the fair and decreetal order dated 21.09.2017 passed in I.A.No.42 of 2017 in O.S.No.940 of 2017 on the file of the Sub Court, Tirumangalam and set aside the same.

For Petitioner : Mr.K.K.Kannan
For Respondents : Mr.R.A.Mohan Ram
for R.1

Mr.T.Vadivelan
for R.2



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ORDER

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The petitioner, as plaintiff, has filed a suit in O.S.No.940 of 2017 before the Sub Court, Tirumangalam, for the relief of partition. Pending the suit, he filed an interlocutory application in I.A.No.42 of 2017 under Order 6 Rule 17 CPC to amend the plaint by including the property in S.No.228/1D in the plaint schedule property. The trial Court, by order dated 21.09.2017, dismissed this interlocutory application and challenging the same, the petitioner has moved the instant revision petition.

2.Learned Counsel for the petitioner submitted that the trial Court has erroneously dismissed the application holding that the property in S.No.228/1D was already sold by the petitioner's father in the year 1976 and that the petitioner being a signatory to the same, has filed the amendment application after a period of thirty years. He further submitted that the petitioner has taken a specific plea that neither the petitioner nor his father has executed the alleged sale deed dated 28.01.1976 and that they came to know about this document only through the written statements and immediately thereafter, they have filed the application for amendment.



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3.Learned Counsel for the respondents on the other hand submitted that there is no cause of action in the plaint as against the proposed inclusion of the property in S.No.288/1D and that this application was filed only to protract the proceedings. Therefore, there is no reason to interfere with the orders of the Court below.

4.This Court paid it's anxious consideration to the rival submissions and also to the materials placed on record.

5.The Hon'ble Supreme Court in ***Life Insurance Corporation of India v. Sanjeev Builders Pvt. Ltd., & Another*** [Civil Appeal No.5909 of 2022, decided on 01.09.2022], has framed certain guidelines with regard to amendment 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.



(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 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.* [emphasis supplied]

(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).”

6.The petitioner / plaintiff has filed the interlocutory application for amending the plaint to include the property in S.No.288/1D in the plaint schedule properties. The suit was filed for partition. The trial Court dismissed the interlocutory application holding that the property in S.No.288/1D was already sold in the year 1976 by the petitioner's father and this petitioner is a signatory to that document and that after a period of thirty years, the petitioner has moved the amendment application. However, the petitioner has taken a specific stand that neither his father nor the petitioner have executed the document dated 28.01.1976 and that he came to know about this document only through the written statements filed by the defendants. The interlocutory application was also filed within two



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years from the filing of the written statements. Even otherwise, in the decision in *Life Insurance Corporation's* case (supra), the Hon'ble Supreme Court has held that delay in applying for amendment alone is not a ground to disallow the prayer and that the issue of limitation may be framed separately for decision.

7. In view of the foregoing discussions and reasonings, this revision petition stands allowed and the order impugned dated 21.09.2017 passed by the learned Subordinate Judge, Tirumangalam, in I.A.No.42 of 2017 is set aside. The trial Court shall entertain the amendment application, following the guidelines enumerated in *Life Insurance Corporation's* case (supra). Considering the age of the suit, the trial Court shall expedite the proceedings and shall dispose of the same, as expeditiously as possible. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No

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Internet : Yes

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To

The Subordinate Judge,
Tirumangalam.



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B.PUGALENDHI, J.

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