



C.R.P.(MD).No.1690 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 26.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

C.R.P.(PD)(MD)No.1690 of 2018

and

C.M.P(MD) No.7337 of 2018

R.Ramamoorthi

... Petitioner/Plaintiff

-VS-

Velu (Died)

1. Muniyammal

2. Marimuthu

3. Mariyappan

4. Marisamy

... Respondents/Defendants

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for the records pertaining to I.A.No.409 of 2017 in O.S.No.97 of 2011 on the file of the learned District Munsif Court Satur, Virudhunagar District and set aside the order passed therein dated 27.10.2017.

For Petitioner : Mr.C.M.Arumugam

For Respondents : No appearance



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ORDER

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The present Civil Revision Petition has been filed by the petitioner under Article 227 of the Constitution of India, to call for the records pertaining to I.A.No.409 of 2017 in O.S.No.97 of 2011 on the file of the learned District Munsif Court Satur, Virudhunagar District and set aside the order passed therein dated 27.10.2017.

2. The revision petitioner is the plaintiff before the trial Court.

3. In respect of the respondents, though their names were printed in the cause list, no one appeared.

4. For the sake of convenience, the parties will be referred to as per the litigative status before the trial Court.

5. The plaintiff has filed a suit for the relief of declaration and injunction in respect of “C” schedule property and recovery of possession of “F” schedule property.



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6. It is the submission of the learned counsel for the petitioner that out of 1 Acre 18 cents, the 39 cents have already been sold and the remaining extent is “B to F” schedule property.

7. The learned counsel for the petitioner would submit that this application is 3rd amendment application. The first amendment application has been filed in respect of the encroachment, and the second amendment application has been filed in respect of impleading the legal heirs of the sole defendant. It is also the submission of the learned counsel for the petitioner that the instant amendment application has been filed after the P.W.1, namely, the plaintiff was cross-examined.

8. The very reason assigned in the affidavit seeking the amendment is that, only when the plaintiff was cross-examined, he came to know about the non-mentioning of the extent of the suit property. The said application was resisted by the respondents before the Court below. Hence, the learned trial Judge, after hearing both sides, dismissed the application dated 27.10.2017 with the finding that, if the amendment is permitted, then it would alter the nature of the suit.



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9. In this connection, the learned counsel for the petitioner would invite the attention of this Court in respect of the plaint. Wherein they have referred the four boundaries of the “B to F” schedule property, and by way of amendment, they wanted to include only the extent. It is also the submission of the learned counsel for the petitioner that while incorporating the extent, it would never change the identity of the property as the four boundaries has already been mentioned and would remain the same.

10. In this connection, the learned counsel for the petitioner also relied upon the judgement of the Hon'ble Supreme Court reported in ***2022 Live Law (SC) 729 (Life Insurance Corporation of India vs. Sanjeev Builders Private Limited and another)*** and paragraph No.70 is extracted 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



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negatived.

(II) All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause justice 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 C.P.C.

(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 proceeds, provided

(a) the amendment does not result in justice 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



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sought to be introduced, in which case the fact 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 hyper-technical 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.



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(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



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issues in controversy between the parties, the amendment should be allowed. (See Vijay Gupta V Gagninder Kr.Gandhi & Ors., 2022 SCC Online Del 1897).

11. In the above judgment, the Hon'ble Supreme Court has laid down that whenever amendment is sought to rectify the absence of material particulars, then the same needs to be allowed, as long as, the same is not introducing any time barred cause of action.

12. As rightly submitted by the learned counsel for the petitioner, even if the extent is incorporated for the respective schedule of property, by virtue of reference of the four boundaries, there could not be any dispute or change in respect of the identity of the property. Therefore, the very finding of the learned trial Judge, that the amendment would change of the nature of the suit cannot be accepted at all. Furthermore, when the suit has been filed for the relief of possession, declaration and injunction, in order to have an effective executable order, the measurement of the suit property is very much essential. Therefore, for the reasons stated above, this Court is inclined to allow this petition.



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13. In the result, this Civil Revision Petition is allowed. At this juncture, the learned counsel for the petitioner seeks the indulgence of this Court for the early disposal of the case. Since the suit is of the year 2011, the learned trial Judge is expected to dispose of the suit in O.S.No.97 of 2011 as expeditiously as possible. There shall be no order as to costs. Consequently connected Miscellaneous Petition is closed.

26.07.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To

1. The District Munsif Court Satur,
Virudhunagar District



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C.KUMARAPPAN,J.

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