



C.R.P.(MD)No.2628 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 14.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

C.R.P.(MD)No.2628 of 2018

and

C.R.P.(MD)No.11503 of 2018

1.Singarajan

2.Savariammal

3.Jayanth

4.Shanthi

... Petitioners / Petitioners/Plaintiffs

Vs.

1.Jesudurai

2.Siluvaiantony

... Respondents / Respondents/Defendants

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order passed by the Additional District Munsif, Valliyoor, dated 18.09.2018, in I.A.No.76 of 2018 in O.S.No.160 of 2014.

For Petitioners : Mr.P.Pethu Rajesh

For Respondents : Mr.V.Balasubramanian



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ORDER

The instant Civil Revision Petition has been filed against the order passed by the Additional District Munsif, Valliyoor, dated 18.09.2018, in I.A.No.76 of 2018 in O.S.No.160 of 2014.

2. The revision petitioners herein are the petitioners/plaintiffs, and the respondents herein are the respondents /defendants 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 a suit for the relief of permanent injunction, restraining the defendants from interfering with the peaceful possession and enjoyment of the schedule mentioned property, on 02.06.2014. In the said suit, the defendants have filed the written statement on 28.10.2014, disputing the rights of the plaintiffs. In the written statement, it is stated that the very suit for the relief



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of bare injunction is not maintainable, without the relief of declaration.

5. However, an amendment application came to be filed by the plaintiffs only during 2018, to incorporate the prayer of declaration. The said amendment application was contested by the defendants on various grounds especially on the ground of limitation.

6. The Court below, after hearing either side, vide impugned order dated 18.09.2018, has dismissed the application with the finding that the amendment application has been filed after the period of 3 years from the date when the right to sue first accrues to the plaintiffs.

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

8. The learned counsel for the plaintiffs would submit that they moved an application only to amend the prayer, and that they have not at all set up any new case or new pleading. It is the further submission of the learned counsel for the plaintiffs that what they want



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is only additional prayer to declare their right, that too based upon the grounds raised by the defendants.

9. Per contra, the learned counsel for the defendants would submit that the suit is of the year 2014 and the written statement was also filed during October 2014. However, after the period of 3 years, ie. only during February - 2018, an application for amendment has been filed. Therefore, the question of amendment is hit by Article 58 of the Limitation Act, hence, prayed to dismiss the application.

10. The learned counsel for the plaintiffs would rely upon 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



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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



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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



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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)”*



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(Emphasis supplied by this Court)

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

12. This Court has perused the amendment application filed by the plaintiffs. According to the petition, they sought amendment only in the prayer column and in the Court fee column. Though a statement was prayed to be added in paragraph 5A, such amendment is only in the nature of defence raised by the defendant. Therefore, what emerge from the above discussion is that, the plaintiffs neither disturbing the structure of the suit nor altering the same. What they sought to be amended is only the nature of relief.

13. The learned counsel for the defendants would rely upon the judgment of the Hon'ble Supreme Court reported in **2016-1-SCC-332 (L.C.Hanumanthappa V. H.B.Shivakumar)**. The relevant portion of the judgment is as follows-

*“14. Given this statement of the law, **it is clear that the present amendment of the plaint is indeed time-***



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barred in that the right to sue for declaration of title first arose on 16th May, 1990 when in the very first written statement the defendant had pleaded, in para 13 in particular, that the suit for injunction simpliciter is not maintainable in that the plaintiff had failed to establish title with possession over the suit property. The only question that remains to be answered is in relation to the doctrine of relation back insofar as it applies to amendments made under Order VI Rule 17 of the Code of Civil Procedure.”

(Emphasis supplied by this Court)

Wherein, the Hon'ble Supreme Court has held that when the amendment, for the relief of declaration, sought after 3 years from the date when the title of the plaintiffs first denied by the defendants, then such amendment is time barred. However, as stated supra, here, the petitioner did not disturb the nature of the suit and they wanted only the additional prayer for declaration.

14. This Court while carefully perusing the judgment of the Hon'ble Supreme Court in ***L.C.Hanumanthappa's*** case (cited supra), the Hon'ble Supreme Court has extracted the nature of amendment



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sought for in paragraph 7 of the judgment. Wherein, the plaintiff has set up a new right by incorporating new pleading. Only in that context, the Hon'ble Supreme Court has dismissed the amendment application, which was filed beyond the period of limitation.

15. The above finding is further vindicated from the various precedents, relied upon by the Hon'ble Supreme Court in ***L.C.Hanumanthappa's case*** (cited supra). In the above judgment, the Hon'ble Supreme Court relied upon a judgment reported in ***AIR-1957-SC-357 (L.C.Leach & Co.Ltd V. Jardine Skinner & Co.)***. The relevant portion of the judgment of ***L.C.Leach & Co.Ltd*** case (cited supra) is as follows-

“15. That would entail the dismissal of this appeal, but the plaintiffs have applied to this Court for amendment of the plaint by raising, in the alternative, a claim for damages for breach of contract for non-delivery of the goods. The respondents resist the application. They contend that the amendment introduces anew cause of action, that a suit on that cause of action could now be barred by limitation, that the plaintiffs had ample opportunity to amend their plaint but that they failed to do so, and that owing to lapse of time the



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*defendants would be seriously prejudiced if this new claim were allowed to be raised. There is considerable force in the objections. But after giving due weight to them, we are of opinion that this is a fit case in which the amendment ought to be allowed. The plaintiffs do not claim any damages for wrongful termination of the agreement, Ex. A, by the notice dated June 13, 1945. What they claim is only damages for non-delivery of goods in respect of orders placed by them and accepted by the defendants prior to the termination of the agreement by that notice. Clause 14 of the agreement expressly reserves that right to the plaintiffs. The suit being founded on Ex. A, a claim based on Cl. 14 thereof cannot be said to be foreign to the scope of the suit. Schedule E to the plaint mentions the several indents in respect of which the defendants had committed default by refusing to deliver the goods, and the damages claimed are also stated therein. The plaintiffs seek by their amendment only to claim damages in respect of those consignments. The prayer in the plaint is itself general and merely claims damages. Thus, all the allegations which are necessary for sustaining a claim for damages for breach of contract are already in the plaint. **What is lacking is only the allegation that the plaintiffs are, in the alternative, entitled to claim damages for breach of contract by the defendants in not delivering the goods.**”* (Emphasis supplied by this Court)



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16. In the ***L.C.Hanumanthappa's case*** (cited supra), the Hon'ble Supreme Court after referring the ***L.C.Leach's case***(cited supra) has not distinguished the said ratio and has followed the same. However, would find that the said Ruling was not applicable to the facts of ***L.C.Hanumanthappa's case (cited supra)***. In this regard the Hon'ble Supreme Court in ***L.C.Hanumanthappa's case*** (cited supra), discussed as follow in paragraph Nos.19 and 20 of the judgment:-

“19. The facts in the aforesaid case were that the plaintiffs had, on the basis of the material facts stated in the plaint, claimed damages on the basis of the tort of conversion. It had been held by the courts below that on the pleading and on the evidence such claim must fail. At the stage of arguments in the Supreme Court, the plaintiff applied to the Supreme Court for amendment of the plaint by raising an alternative plea on the same set of facts, namely, a claim for damages for breach of contract for non- delivery of the goods. The respondents in that case resisted the said plea for amendment, stating that a suit based on this new cause of action would be barred by limitation. This Court, while allowing the said amendment, stated that no change needs to be made in the material facts pleaded



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before the court all of which were there in support of the amended prayer. In any case, the prayer in the plaint as it originally stood was itself general and merely claimed damages. Thus, all the allegations which were necessary for sustaining a claim of damages for breach of contract were already there in the plaint. The only thing that was lacking was the allegation that the plaintiffs were in the alternative entitled to claim damages for breach of contract. In the facts of the said case, this Court held:-

“It is no doubt true that courts would, as a rule, decline to allow amendments, if a fresh suit on the amended claim would be barred by limitation on the date of the application. But that is a factor to be taken into account in exercise of the discretion as to whether amendment should be ordered, and does not affect the power of the court to order it, if that is required in the interests of justice.” [at page 415]

20. It is clear that this case belonged to an exceptional class of cases where despite the fact that a legal right had accrued to the defendant by lapse of time, yet this consideration was outweighed by the special circumstances of the case, namely, that no new material fact needed to be added at all, and only an alternative prayer in law had necessarily to be made in view of the original plea in law being discarded.”



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17. It is pertinent to mention here that in ***L.C.Hanumanthappa's case*** (cited supra), the judgment in the Hon'ble Supreme Court in ***Pirgonda Hongonda Patil V. Kalgonda Shidgonda Patil*** reported in ***1957-SCR-595***, has also been referred.

18. It is also relevant to refer the judgment of the Hon'ble Supreme Court reported in ***2001-2-SCC-472 (Ragu Thilak D.John V.S.Rayappan)***. Even in this judgment, after following ***L.C.Leach's case*** (cited supra), has held that in order to minimise the litigation depend upon the circumstance of this case, and that when the dispute with regard to the plea of limitation is exist, the amendment may be allowed subject to the question of limitation.

19. Therefore, what would emerge from the above judgment is that, though in ***L.C.Hanumanthappa's case***, a declaration relief which sought after a period of 3 years was rejected, the same was on a different facts. Where the plaintiffs have set up a new case in the plaint proclaiming title over the property and sought for the prayer for



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declaration. But, in this case, the plaintiffs have pleaded their title and what he want is only the relief of declaration. To put it differently by amending the prayer, the nature and character of the suit is not changed. Further the defendants also will in no way be prejudiced as the pleadings of title has already been put forth in the plaint.

20. Therefore, this Court is of the firm view that the order passed by the Court below dismissing the application by relying the judgment reported in **2018-1-CTC-634 (G.Vijaya V. M.Gurusamy)**, is perverse. In **G.Vijaya's** case cited supra, it appears that the declaration sought in respect of the document. But, here, the plaintiffs seek for a declaration sought in respect of the property. Therefore, this Court is of the firm view that the order passed by the Court below dismissing the amendment is liable to be interfered with.

21. In the result, the instant Civil Revision Petition stands **allowed**. The order passed by the Additional District Munsif, Valliyoor, dated 18.09.2018, in I.A.No.76 of 2018 in O.S.No.160 of 2014, is hereby set aside and the in I.A.No.76 of 2018 is allowed as prayed for.



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There shall be no order as to cost. Consequently, connected
Miscellaneous Petition is closed.

14.09.2023

NCC : Yes/No
Index : Yes/No
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To

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



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C.KUMARAPPAN.,J.

Ls

Order made in

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