



Rev.Aplc(MD)No.35 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 20.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

Rev.Aplc(MD)No.35 of 2020
and
C.M.P.(MD)Nos.2624 & 6230 of 2021

1.Gurusamy Nadar

Deivanaiammal (Died)

2.Muniyandi

... Petitioners / Petitioners

Vs.

Soundarapandian

... Respondents / Respondents

Prayer:- Review Petition filed under Order 47 Rule 1 of the Code of Civil Procedure, to review the order passed in C.R.P.(MD)No.2537 of 2012 on 29.01.2018.

For Petitioner : Mr.S.Meenakshisundaram

For Respondents : Mr.S.Ramesh

ORDER

The instant Review Petition is at the instance of the revision petitioners.



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2. The revision petitioners are the plaintiffs in O.S.No.194 of 2003 before the District Munsif Court, Aruppukkottai. Pending the suit, the plaintiffs filed I.A.No.534 of 2010, seeking to amend the plaint to correct an inadvertent mistake in the pleadings, mentioning that the suit property was only belonging to the mother - Aavudaiammal and not the father, Subbiah Nadar. The said application was dismissed by the trial Court on the ground that the amendment was sought for after the trial of the suit commenced. The plaintiffs therefore filed the Civil Revision Petition before this Court in CRP(MD)No.2537 of 2012. This Court, in and by order dated 29.01.2018, dismissed the Civil Revision Petition, confirming the order of the trial Court. The instant Review is filed stating that there is an error apparent on the face of the order of this Court, viz., this Court had stated that the mother -Aavudaiammal never had any interest in the suit property. It is contrary to record and the indisputable fact is that the property belonged only to said Aavudaiammal, she having purchased the same, in and by a sale deed dated 30.05.1936, vide registered document No.344/1936.



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3. I have heard Mr.S.Meenakshisundaram, learned Senior Counsel for the review petitioners as well as Mr.S.Ramesh, learned counsel for the respondent. I have gone through the records.

4. Mr.S.Meenakshisundaram, learned Senior Counsel for the review petitioners would submit that this Court, while disposing of the revision has mentioned in paragraph No.6 of the order that Aavudaiyammal, has no share in the property and that she had wrongly created a right in the suit property. This according to the learned Senior Counsel is clearly an error apparent on the face of the plaint pleadings as well as the documents filed along with the suit, which included a copy of the registered sale deed dated 30.05.1936.

5. Per contra, Mr.S.Ramesh, learned counsel for the respondent would state that the review is not maintainable for the reason that this Court rightly dismissed the amendment application since it was filed after the commencement of the suit and that there is no error apparent on the face of the record in the order of this Court, which is sought to be



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reviewed.

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6. I am in agreement with the contention of the learned Senior Counsel learned counsel for the review petitioners / plaintiffs. The plaintiffs' categorical case before the trial Court is that the property belonged to Aavudaiyammal and the same can be evidenced from copy of the document, viz., registered sale deed dated 30.05.1936 in and by which the suit property was purchased by Aavudaiyammal. A copy of the sale deed is enclosed in the typed set of papers as well. I have also gone through the same. That apart as contended by the learned Senior Counsel the said sale deed has also been marked as Ex.A10, during trial. Though the learned counsel for the respondent would submit that the amendment was rightly rejected as it was sought after the commencement of the trial, I am unable to agree with the said submission. There is no blanket impediment, to permit amendment, after the commencement of trial. Proviso to Order VI 6 Rule 17 C.P.C clearly permits amendments after trial has commenced, if the Courts come to the conclusion that despite due diligence the parties could not seek the amendment before commencement



of the trial.

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7. The learned Senior Counsel for the review petitioners would also place reliance on the decision of the Hon'ble Supreme Court in ***Life Insurance Corporation of India V. Sanjeev Builders Private Limited*** reported in ***2022-Live Law-SC-729***, wherein, the Hon'ble Supreme Court summed up the position with regard to amendments at para – 70 of its order, the same is extracted for easy reference:-

“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 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.

8. On a reading of Order VI Rule 17 C.P.C and principles enunciated by the Supreme Court, I have no doubt in mind that the amendment is to be allowed. No prejudice will be caused to the respondent, since no new case set up by the review petitioner by way of such amendment. Further, I find that this Court, in the order dated



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29.01.2018 has not correctly state the factual position and in paragraph No.6, it has been received that Aavudaiyammal, who is the actual owner, did not have any interest in the property. This is certainly an error apparent on the face record, warranting interference. Insofar as the submission of the learned counsel for the respondent that the amendment cannot be entertained after the commencement of the trial, I am not in agreement with the said contention of the learned counsel. Applying the ratio laid down by the Hon'ble Supreme Court in *Life Insurance Corporation of India's* case, amendments can be allowed, if the amendment does not result in injustice to the other side and is required for effective and proper adjudication of the issues in the suit. The amendment sought for will certainly assist the Court and in settling the controversy between the parties and at the same time it will not cause any prejudice to the respondent also.

9. In fine, the review Application is allowed and the order, in C.R.P.(MD)No.2537 of 2012 dated 29.01.2018, is recalled and the Civil Revision Petition stands allowed.

10. Considering that the suit is for declaration of title and is of



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the year 2003 and has been instituted way back in the year 2003 and the suit is already in a part-heard stage, the trial Court shall ensure that the amendment process is completed within a period of 4 weeks from the date of receipt of copy of this order. The defendant shall be entitled to file an additional written statement within a period of two weeks thereafter. The trial Court shall frame any additional issues, if any, required and dispose of the suit within a period of six months from the date of receipt of copy of this order. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Internet : Yes
Index: Yes/No
Neutral Citation: Yes/No
Ls

20.12.2023

To

1. The District Munsif Court,
Aruppukkottai.



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2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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P.B.BALAJI,J.

Ls

order in
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