



*C.R.P.(MD)No.3257 of 2023*

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 13.12.2023

Delivered on : 20. 12.2023

CORAM:

**THE HON'BLE MR.JUSTICE K.MURALI SHANKAR**

C.R.P.(MD)No.3257 of 2023

and

C.M.P.(MD)No.16824 of 2023

Durairaj (Died)

1.Saminathan

2.Anuradha

3.Minor Durai Amirthan

4.Amirthavalli : Petitioners/Petitioners/Plaintiffs

Vs.

1.Banumathi

2.Sudhakar

3.Vijayakumar

4.Senthilkumar (Died)

5.Rajeswari

6.Minor.Santhosh : Respondents/Respondents/Respondents



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**Prayer** : This Civil Revision Petition filed under Article 227 of C.P.C., to set aside the order, dated 12.07.2023 passed in I.A.No.630 of 2023 in O.S.No.133 of 2012 by the learned Principal Subordinate Judge, Thanjavur.

For Petitioners : Mr.A.Senthilkumar

### **ORDER**

The Civil Revision Petition is directed against the order passed in I.A.No.630 of 2023 in O.S.No.133 of 2012, dated 12.07.2023 on the file of the Principal Subordinate Court, Thanjavur, dismissing the petition filed under Order VI Rule 17 of C.P.C.

2. The revision petitioners as plaintiffs have filed the above suit to declare that the suit property is belonging to them and for permanent injunction restraining the defendants and their men from interfering with their peaceful possession and enjoyment of the suit property. The respondents/defendants have filed their written statement and are contesting the suit.



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3. It is evident from the records that the trial was commenced on 22.02.2019 and the plaintiffs and defendants have already adduced their side evidence. It is also evident that after advancement of the arguments of both sides, the above petition came to be filed, seeking orders to amend the plaint.

4. The case of the revision petitioners/plaintiffs is that on 29.01.1973, they have gifted two acres of land to the Tamil Nadu Government; that they have executed release deed, dated 10.06.1982 in favour of Ramasami Udaiyar in respect of two acres of land, who in turn settled one acre of land in favour of Sudhandradevi, vide document, dated 21.01.1986; that they have sold 18 cents of land to one Kaliyaperumal on 21.07.1973 that their father originally purchased the entire property and that since the defendants have not raised any objections, they have claimed declaratory relief in respect of the property purchased by their father on 10.12.1971; that the defendants in their written arguments have raised the objections that the plaintiffs have suppressed the earlier transactions and that therefore, they were constrained to file the above application to exclude 4 acres 18 cents from the suit property and to declare that the



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remaining property is belonging to them; that no prejudice would be caused to the other side, if the proposed amendments are permitted and that the petitioners will be put to loss and hardship, if the petition is not allowed.

5. The defence of the respondents/defendants is that the amendment petition has been filed with intention to make vexatious and frivolous allegations against the respondents; that they have not assigned sufficient reasons for making amendment at the end of the litigation; that when the case was pending for reply arguments, the above petition came to filed; that though the trial was commenced as early as on 22.02.2019, the matter has been progressed and trial has been completed; that the petitioners are very much aware of the disposition of portion of the suit properties even prior to the litigation; that they have parted two acres of land to the Government on 29.01.1973 itself; that the Government has taken possession and constructed buildings for the quarters of Government servants; that the Nallakannu Udaiyar and Ramasami Udaiyar have sold 18 cents of suit property to Kaliyaperumal on 21.07.1973 and the purchasers had taken possession of that land; that the fifth petitioner/Amirthavalli,



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first petitioner and Sakthivel have executed a release deed in favour of Ramasami Udaiyar on 10.06.1982; that the said Ramasami Udaiyar executed a settlement deed on 20.01.1986 in favour of Rengasami Udaiyar; that the second petitioner while examining himself as P.W.1 has claimed and deposed as if they owned and possessed the entire suit land of 13 acres 84 cents; that the above petition has been filed to drag on the proceedings endlessly and that therefore, the above petition is liable to be dismissed.

6. The learned trial Judge, after enquiry, has passed the impugned order, dismissing the petition. Aggrieved by the order of dismissal, the present revision came to be filed.

7. The learned counsel for the petitioners would submit that they have filed the amendment petition only to delete 4 acres 18 cents of land from the suit property and the same would not change the nature of the suit or the cause of action; that the respondents/defendants will not in any way be affected, if the proposed amendments are allowed; that the trial Court has dismissed the amendment petition only on the ground that the



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petition was filed belatedly and that the learned trial Judge, without considering the legal position in proper perspective, has dismissed the petition mechanically.

8. The learned counsel for the respondents/defendants would submit that though the trial was commenced in the year 2019 itself, the same was completed and arguments on both sides were advanced in March 2023 and that when the case was pending for reply arguments of the plaintiffs side, the present application came to be filed; that though the petitioners are fully aware of the property transactions, which were held even prior to the filing of the suit, they have not chosen to furnish the extent of land allegedly owned by them and that the above petition has been filed at the end of trial with sole intention to protract the proceedings endlessly.

9. The learned counsel for the petitioners has relied on the following decisions of Hon'ble Supreme Court.

(i) ***Abdul Rehman and another vs. Mohammed Ruldu and others*** reported in ***(2012) 11 SCC 341***.



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7) *It is clear that parties to the suit are permitted to bring forward amendment of their pleadings at any stage of the proceeding for the purpose of determining the real question in controversy between them. The Courts have to be liberal in accepting the same, if the same is made prior to the commencement of the trial. If such application is made after the commencement of the trial, in that event, the Court has to arrive at a conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.*

8) *The original provision was deleted by Amendment Act 46 of 1999, however, it has again been restored by Amendment Act 22 of 2002 but with an added proviso to prevent application for amendment being allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial. The above proviso, to some extent, curtails absolute discretion to allow amendment at any stage. At present, if application is filed after commencement of trial, it has to be shown that in spite of due diligence, it could not have been sought earlier. The object of the rule is that Courts should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side. This Court, in a series of decisions has held that the power to allow the amendment is wide and can be exercised at any*



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*stage of the proceeding in the interest of justice. The main purpose of allowing the amendment is to minimize the litigation and the plea that the relief sought by way of amendment was barred by time is to be considered in the light of the facts and circumstances of each case. The above principles have been reiterated by this Court in J. Samuel and Others vs. Gattu Mahesh and Others, (2012) 2 SCC 300 and Rameshkumar Agarwal vs. Rajmala Exports Pvt. Ltd. and Others, (2012) 5 SCC 337.*

**(ii) *M/s.Chakreshwari Construction Private Limited Vs. Manohar Lal*** reported in **(2017) 5 SCC 212.**

*14. The principle applicable for deciding the application made for amendment in the pleadings remains no more res integra and is laid down in several cases. In the case of Revajeetu Builders and Developers v. Narayanaswamy & Sons and Ors (2009) 10 SCC 84, this Court, after examining the entire previous case law on the subject, culled out the following principle in Para 63 of the judgment which reads as under:*

*63. On critically analysing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment:*



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*(1) whether the amendment sought is imperative for proper and effective adjudication of the case;*

*(2) whether the application for amendment is bona fide or mala fide;*

*(3) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;*

*(4) refusing amendment would in fact lead to injustice or lead to multiple litigation;*

*(5) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and*

*(6) as a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.*

*These are some of the important factors which may be kept in mind while dealing with application filed under Order 6 Rule 17. These are only illustrative and not exhaustive.”*

10. There is no dispute about the legal position settled by the Hon'ble Supreme Court. It is pertinent to note that as per Amendment Act 22 of 2002, a new proviso has been added so as to prevent the application for amendment being allowed, after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.



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11. In the *Abdul Rahman's* case above referred, the Hon'ble Apex Court has specifically observed that the new proviso added, curtails absolute discretion to allow amendment at any stage and that if application is filed after commencement of trial, it has to be shown that in spite of due diligence, it could not have been sought earlier.

12. In the case on hand, admittedly the suit was filed in the year 2012 itself. As already pointed out, the trial was commenced on 22.02.2019. More importantly, all the transactions referred by the petitioners in their affidavit filed in support of the petition were prior to the filing of the suit and more particularly, the transactions were from 1973 to 1986, 26 years prior to the filing of the suit.

13. According to the respondents/defendants, the Government, in the land given to it on 29.01.1973, has constructed the buildings for the quarters of Government servants. As rightly contended by the learned counsel for the respondents, the petitioners in their affidavit have nowhere whispered as to why those transactions were not pleaded in the plaint and



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as to why the land actually belonging to them on the date of filing of the suit was shown in the plaint. Just because, no prejudice would be caused to the other side, is not a ground to permit the amendments at a very belated stage and that too at the fag end of the trial.

14. Considering the above, as rightly contended by the learned counsel for the respondents/defendants, the inaction for the past 11 years would only exhibit the complete absence of due diligence. Despite the addition of such a strict proviso to Order VI Rule 17, the petitioners cannot be allowed to amend their pleadings at their whims and fancies and that too after the conclusion of arguments.

15. On considering the entire facts and circumstances of the case, the trial Court has rightly observed that the above petition came to be filed only to drag on the proceedings. Hence, this Court concludes that there is nothing to interfere with the impugned order and as such, the Civil Revision Petition is devoid of merits and the same is liable to be dismissed.



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16. In the result, the Civil Revision Petition is dismissed. Since the suit is pending from 2012, the trial Court is directed to proceed with the trial and dispose of the suit within a period of one month from the date of receipt of copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

**20.12.2023**

NCC :yes/No  
Index :yes/No  
Internet:yes/No  
das

**To**

- 1.The Principal Subordinate Judge,  
Thanjavur.
- 2.The Section Officer,  
VR Section,  
Madurai Bench of Madras High Court,  
Madurai.



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**K.MURALI SHANKAR,J.**

das

Pre-delivery order made in  
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and  
C.M.P.(MD)No.16824 of 2023

Dated : 20.12.2023