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C.R.P.(PD).No.848 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(PD).No.848 of 2021
and C.M.P.No.7007 of 2021

1.K.Krishnaveni

2.K.Kavitha

3.K.Kousalya

4.Rajini

5.Rani

... Petitioners

VS

1.K.Easwariammal (Died)

2.R.Madhankumar

3.R.Vanaja

4.The Sub-Registrar,
Gandhipuram Sub Registrar Office,
Kalapatti Road, Coimbatore.

... Respondents

(Respondent-Died. Respondents 2 and 3 LRs of the deceased R-1 Viz. K.Easwariammal as per the memo dated 09.02.2023 and vide court order dated 09.02.2023 made in CRP.No.848 of 2021 by VBSJ (Recorded))



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Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the order and decretal order dated 18.01.2021 in I.A.No.1 of 2020 in O.S.No.914 of 2018 on the file of the II Additional District Munsif, Coimbatore and allow the CRP as prayed for.

For Petitioners : Mrs.AL.Ganthimathi
for M/s.A.Ramkumar

For R1 : Died

For R2 : Mr.T.R.Rajagopalan
Senior Advocate
for M/s.D.Chitra Maragatham

For R3 : Mr.G.Vasudevan

For R4 : Mr.V.Jeevagiridharan
Additional Government Pleader

ORDER

The Civil Revision Petition is filed challenging the order passed by the Trial Court dismissing the application filed by the petitioners/plaintiffs seeking amendment of the plaint.

2. The petitioners herein filed a suit against the respondents seeking a declaration that Settlement Deed dated 30.10.2017 executed by 1st respondent in favour of 2nd respondent was void *ab initio* and for permanent injunction



restraining the respondents 1 and 2 from encumbering the suit property and for permanent injunction restraining the respondents 1 to 3 from disturbing the petitioners' peaceful possession and enjoyment of the suit property.

3. It is the case of the petitioners that the suit property originally belonged to one M.Kandasamy and he filed a suit in O.S.No.916 of 1977 seeking declaration of his title against the 1st respondent herein on the file of the Subordinate Court, Coimbatore and the said suit was decreed and the same was confirmed by the High Court in appeal. When title of the 1st respondent was negatived by the decree in favour of the M.Kandasamy, the 1st respondent executed the Settlement Deed in favour of 2nd respondent in respect of the suit property and the said Settlement Deed was void *ab initio* and non-est in eye of law. It was further claimed by the petitioners that M.Kandasamy made an arrangement in favour of plaintiffs by way of a Will and suppressing the decree in O.S.No.916 of 1977, the 1st respondent executed the Settlement Deed in favour of 2nd respondent. It was further claimed by the petitioners that they had been in possession and enjoyment of the suit property for more than 40 years. Pending suit, the petitioners filed the



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present amendment application seeking to include a new plea in the plaint claiming adverse possession over the suit property and they also sought for inclusion of a new prayer for declaration of their title based on prescriptive right.

4. The said application was opposed by the respondents by filing counter affidavit stating that the amendment would cause fundamental change to the constitution of the suit and new prayer sought to be introduced is based on different cause of action.

5. The Trial Court on consideration of rival submissions, dismissed the amendment application on the ground that the petitioners, who claimed right over the suit property under a Will were not entitled to raise plea of adverse possession and seek new relief of declaration of adverse possession. Aggrieved by the said order, the petitioners are before this Court.

6. The learned Senior Counsel appearing for the petitioners submitted that amendment sought for by the petitioners will not change the character of



the suit and there are necessary averments in the suit regarding long and continuous enjoyment of the petitioners even prior to the amendment and hence, amendment sought for was erroneously negated by the Trial Court.

7. The learned Senior Counsel appearing for the 2nd respondent submitted that the petitioners filed the suit seeking declaration with regard to the validity of the Settlement Deed executed by the 1st respondent in favour of the 2nd respondent and now, they want to include the prayer for inclusion of title based on adverse possession and the same would amount to change of the fundamental character of the suit and the new relief sought for is based on different cause of action. The learned Senior Counsel further submitted that petitioners having claimed title under a Will executed by M.Kandasamy, which was already negated in earlier litigation are not entitled to introduce new pleadings claiming adverse possession. In support of his contention the learned Senior Counsel relied on the following judgements:-

- (i) ***AIADMK (present known as All India Anna Dravida Munnetra Kazhagam (Ammu) vs. AIADMK (Puratchi Thalaivi Ammu)*** reported in ***2024 (1) CTC 287***.



(ii) ***Asian Hotels (North) Limited vs. Alok Kumar Lodha and others***

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(iii) ***Revajeetu Builders and Developers vs. Narayanaswamy and sons and others*** reported in (2009) 10 SCC 84.

8. The Hon'ble Apex Court in ***Life Insurance Corporation of India vs. Sanjeev Builders Private Limited and another*** reported in 2022 SCC Online SC 1128, after discussing various case laws under the provisions of Order 6 Rule 17 summarised the principles to be followed while considering the amendment application. The same reads 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 negatived.

(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.

(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



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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.

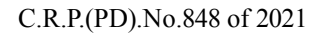
(xi) Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable 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)”

9. In the light of the above said principles, let us consider the present case on hand. Originally, the plaintiffs filed a suit for declaration that Settlement Deed executed by 1st defendant in favour of 2nd defendant was null and void and for consequential injunction restraining the respondents 1 to 3



from interfering petitioners' peaceful possession and enjoyment of the suit property. The petitioners also sought for another injunction restraining the respondents 1 to 2 from encumbering the suit property. Now, by way of amendment, petitioners want to raise pleading with regard to their hostile possession over the suit property for more than 30 years. The petitioners also seek declaration of their adverse possession of the suit property by introducing a new prayer.

10. A perusal of the original averment in the plaint would clearly establish even in original Paragraph No.8 of the plaint, petitioners claimed that they had been in possession and enjoyment of the suit property for more than 40 years and the 1st respondent had been attempting to grab the suit property for more than 40 years. In such circumstances, the new plea which sought to be introduced asserting uninterpreted, continuous and open possession to the knowledge of the defendants goes well with the earlier plea raised in the plaint. In the original unnumbered plaint filed by the petitioners, the prayer 'C' is for permanent injunction restraining the respondents 1 to 3 from disturbing with the petitioners' peaceful possession and enjoyment of the



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parties in a comprehensive way. Therefore, in the light of the principles set out by the Hon'ble Apex Court in the above mentioned decision, in order to decide the *lis* in a comprehensive way and to prevent multiplicity of proceedings, the amendment sought for by the petitioners/plaintiffs shall be allowed.

13. Though the petitioners sought for declaration of their adverse title by way of amendment, in the valuation column of the plaint, the petitioners want to introduce a new valuation by way of introducing Paragraph XII (a1). The petitioners want to value the new relief under Section 25 (d) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955 and pay minimum court fee. The petitioner want to value the new relief of declaration based on adverse title under Section 25 (d) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955. When petitioners seek declaration of their title and consequential injunction, the relief shall be valued under Section 25 (d) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955. Now, the petitioners want declaration of adverse title and hence, the injunction sought for is consequential to that declaration.

14. In such circumstances, the petitioner shall value new relief under



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Section 25 (b) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955

and pay *ad valorem* court fee on half of the market value of the property. The notional minimum valuation adopted by the petitioners/plaintiffs under Section 25 (c) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955 is not correct. Hence, the amendment application filed by the petitioner is allowed subject to the condition that petitioners shall value the prayer under Section 25 (b) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955 and pay *ad valorem* court fee on the half of the market value of the suit property.

15. Thus, the Civil Revision Petition stands allowed with the condition that the petitioners shall value the new relief and pay court fee under Section 25 (b) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955. No costs. Consequently, the connected civil miscellaneous petition is closed.

28.02.2024

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
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1.The II Additional District Munsif, Coimbatore.

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2.The Sub-Registrar,
Gandhipuram Sub Registrar Office,
Kalapatti Road, Coimbatore.



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S.SOUNTHAR, J.

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