



CRP.No.4313 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CRP.No.4313 of 2019

and

CMP.No.28049 of 2019

S.Balachandran

... Petitioner

Vs.

S.Ganesan
313, Auxlin Drive
Konazvilli, Deenisli,
USA
Rep.by Power Agent
RKK.Veenakumari
1602-Trichy Road
Coimbatore-18.

...Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair order and decree made in IA.No.725 of 2013 in OS.No.855 of 2010 on the file of the III Additional Sub-Judge, Coimbatore.



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For Petitioner : Mr.T.R.Rajagopalan
Senior Counsel
for Ms,P.Veena Suresh

For Respondent : Mr.M.Ganesh
for Mr.N.Manokaran

ORDER

This Civil Revision Petition is filed challenging the order passed by the Court below allowing the petition filed by the respondent/plaintiff seeking to amend the plaint.

2. The respondent herein filed a suit seeking rendition of accounts by the petitioner herein. It is the case of the respondent that the petitioner was his younger brother and he appointed the petitioner as his power agent by power of attorney dated 15.01.1987 to manage the common properties and collect rent. As the petitioner was not truthful to the respondent, he said to have cancelled the power on 24.11.2007 and issued a legal notice to the petitioner. Thereafter, the present suit has been filed



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seeking rendition of accounts from the petitioner three days prior to 24.11.2007 (date of cancelling of power deed).

3. While the suit was pending, the instant application has been filed seeking amendment of the plaint so as to seek rendition of accounts in respect of the investments made in the name of the respondent and also his family members. In the affidavit filed in support of the amendment application, it was stated by the respondent that at the time of filing of the suit due to oversight he mentioned that accounts were sought for only in respect of the income derived from the suit property. But the income due to him, from the investments standing in his name was not mentioned in the suit properties. Therefore, in order to seek the relief of accounts in respect of the respondent's income from investment made in his name and that of his family members, the respondent wanted to include the relevant averment in the plaint and the amendment application was filed for that purpose.

4. The said amendment application was opposed by the petitioner on the ground that originally the suit was filed in respect of income from the property, in respect of which the petitioner was appointed as power



of attorney and the present relief claimed by the respondent for accounts in respect of investments is entirely based on different cause of action. It was also claimed by the petitioner that the power in favour of the petitioner was cancelled on 24.11.2007 and accounts in respect of investments in the name of the respondent and his family members have been sought for by way of the present amendment application in the year 2013, which is beyond the period of limitation and therefore, the relief sought for by way of amendment is barred by limitation.

5. The learned Senior Counsel appearing for the petitioner apart from the above mentioned objection also submitted that in the impugned order the Court below has not given any specific reason for allowing the amendment application and therefore, the same is liable to be set aside.

6. In support of his contention, the learned Senior Counsel for the petitioner relied on the judgment of the Hon'ble Apex Court in ***Revajeetu Builders and Developers Vs. Narayanaswamy and Sons and others***, reported in ***(2009) 10 SCC P.84***.



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7. The learned counsel for the respondent submitted that allowing the amendment will prevent multiplicity of proceedings and decide all disputes between the parties all together in one suit. Therefore, no interference is called for.

8. In support of his contention, the learned counsel for the respondent relied on the judgment of 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.

9. In *Revajeetu Builders and Developers Vs. Narayanaswamy and Sons and others*, (cited supra), the Apex Court laid down the basic principles which ought to be taken into consideration while allowing the amendment application. The relevant portion of the judgment reads as follows:

“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:

(1) Whether the amendment sought is imperative for property 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 amendment if a fresh suit on the amended claims would be barred by limitation on the date of application.”

10. In *Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited and another*, (cited supra), after analysing the power of the Court under Order 6 Rule 17 of Code of Civil Procedure,



observed as follows:

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“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



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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.

(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, 2022 SCC OnLine Del



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11. In the light of the above mentioned judgment let us consider the case on hand. Admittedly in the present case, the trial has not commenced and the amendment sought for is a pre-trial amendment. Therefore, the Court may take liberal approach in considering the said application. Originally the suit was filed seeking rendition of accounts from the petitioner in respect of the profits derived by him from the immovable properties in respect of which he was appointed as power agent to manage the property. Now by way of amendment the respondent seeks rendition of accounts in respect of the investments made in the name of the respondent and his family members. It is not in dispute that the petitioner and the respondent are brothers and reading of the plaint as a whole would suggest that the respondent is placed at foreign country and the petitioner is in India managing the properties. Therefore, there is a dispute between them in respect of the profits earned out of estate.



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12. In such circumstances, in order to adjudicate the dispute between the parties comprehensively and in a more effective manner, the amendment sought for by the respondent need to be allowed. This Court feels allowing of the amendment is absolutely necessary to determine all controversies between the parties regarding the sharing of profits, income etc.

13. The learned Senior Counsel appearing for the petitioner submitted that the present new prayer sought to be introduced by seeking accounts in respect of investments is barred by limitation. In view of the said submission made by the learned Senior Counsel for the petitioner, this Court deems it appropriate to declare that the amendment sought for by the respondent will take effect from the date of presentation of the amendment application namely 02.04.2013 and it will not relate back to the date of presentation of the plaint.

14. In view of the said declaration by this Court, it is always open to the petitioner to raise the question of limitation, regarding the new



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prayer sought for by the respondent and the same shall be adjudicated upon merits, at the time of final disposal of the suit. Therefore, allowing of the amendment will enable the Court to decide the entire controversy between the parties in a comprehensive manner. Further, it will not cause any prejudice to the petitioner. The declaration by this Court that amendment application will take effect from 02.04.2013 will protect the interest of the petitioner if any, in respect of the question of limitation.

15. It is also settled law that the amendment which aids prevention of multiplicity of proceedings shall be liberally allowed. In the case on hand, the respondent who originally filed a suit seeking rendition of accounts in respect of the properties managed by the petitioner, in pursuance of the power deed now seeks to include new prayer for rendition of accounts in respect of investment made in the name of the respondent and his family members. Instead of driving the respondent to file a separate suit for that purpose, it is better to permit him to amend the pleadings and seek the said relief also in the very same suit. Such an exercise will certainly reduce the burden of the Court and also prevent multiplicity of proceedings. Hence, I do



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not find any illegality or irregularity in the order passed by the Court below and accordingly, the Civil Revision Petition is dismissed, with the clarification that the amendment shall take effect from the date of amendment application namely 02.04.2013 and the same will not relate back to the date of presentation of the plaint.

16. With these clarification, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

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Internet : Yes
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To

The III Additional Sub-Judge, Coimbatore.



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