



C.R.P.No.1549 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on 07.03.2023

Delivered on 08. 03.2024

CORAM:

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA

KURUP

C.R.P.No.1549 of 2020
and C.M.P.No.9300 of 2020

Selvaraj

... Petitioner/Petitioner/Plaintiff

-Vs-

1.Ramaiya

2.Narayanasamy

... Respondents/Respondents/

Respondents

Prayer:- Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 01.07.2020 made in I.A.No.906 of 2017 in O.S.No.48 of 2009 on the file of the learned District Munsif, Hosur, Krishnagiri District and to allow the Civil Revision Petition.

For Petitioner : Mr.C.Prabakaran
For R1 : No appearance
For R2 : Mr.M.P.Saravanan

ORDER

This Civil Revision Petition had been filed to set aside the fair and decretal order dated 01.07.2020 made in I.A.No.906 of 2017 in O.S.No.48 of 2009 on the file of the learned District Munsif, Hosur, Krishnagiri



C.R.P.No.1549 of 2020

District.

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2. The learned Counsel for the Revision Petitioner submitted that the suit in O.S.No.48 of 2009 had been filed by the Plaintiff/Petitioner herein to declare the sale deed executed by the first Defendant in favour of the second Defendant dated 26.08.2008 on the Office of the Sub Registrar, Hosur as Doc. No.11382/2008 as null and void and for other consequential reliefs. It is the contention of the learned Counsel for the Petitioner that the Petitioner as Plaintiff in the suit in O.S.No.48 of 2009 on the file of the learned District Munsif, Hosur, after filing of the written statement, the Plaintiff had sought to amend the plaint including the schedule of property. The learned Judge dismissed the Petition stating that the amendment sought for had been filed after nine years after filing of the written statement, therefore, the same cannot be accepted and dismissed the Petition. Aggrieved by the same, the Plaintiff in O.S.No.48 of 2009 before the learned District Munsif, Hosur/Petitioner in I.A.No.906 of 2017 in O.S.No.48 of 2009 on the file of the learned District Munsif, Hosur had filed this Revision Petition under Article 227 of the Constitution of India seeking to set aside the order of dismissal of I.A.No.906 of 2017 in O.S.No.48 of 2009 dated 01.07.2020.



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3. The learned Counsel for the Revision Petitioner invited the attention of this Court to the averments in the plaint, the written statement filed by the Defendant, the affidavit and petition filed by the Petitioner as Petitioner in I.A.No.906 of 2017 seeking amendment of plaint wherein the details of the description of property was mentioned, the contents of the counter filed by the Defendant as Respondents in I.A.No.906 of 2017 in O.S.No.48 of 2009 and the order passed by the learned District Munsif, Hosur, dismissing the I.A.No.906 of 2017 in O.S.No.48 of 2009, dated 01.07.2020. The copies of the same are available in the typed set. The learned Counsel for the Revision Petitioner also submitted that by amending the plaint, no prejudice would be caused to the Defendant. Already the description of the property had been discussed in the body of the plaint but by inadvertence the learned Counsel for the Plaintiff failed to mention the schedule of property in the plaint. Therefore, before commencing of the trial, the Plaintiff had filed Petition seeking amendment to the plaint. Also the learned Counsel for the Revision Petitioner submitted that the trial of the suit had not commenced. Therefore, as per the amended provisions of Civil Procedure Code, as amended in 2002, the



C.R.P.No.1549 of 2020

WEB COPY

amendment shall be allowed liberally before commencement of trial. Also as per the reported rulings of the Hon'ble Supreme Court as well as the Hon'ble High Court, the amendments in pending suits are to be allowed liberally prior to commencement of the trial. The learned trial Judge had dismissed the Petition stating that after filing of the written statement the Plaintiff had failed to exercise his right within the specified time and had filed the Petition belatedly which amounts to miscarriage of justice thereby preventing the Plaintiff from protecting his valuable right before commencement of trial. Therefore, the learned Counsel for the Revision Petitioner seeks to set aside the order of dismissal in I.A.No.906 of 2017 in O.S.No.48 of 2009.

4. In support of his contention, the learned Counsel for the Revision Petitioner relied on the Full Bench decision of this Court reported in **2007-1-L.W. 32 [M/s.Hi. Sheet Industries -vs- Litelon Limited and others]** wherein it has been observed as follows:

“C.P.C (1908), Order 6, Rule 17/Amendment of plaint, Scope of, C.P.C. Amendment Act 22 of 2002, Proviso to O.6, Rule 17, applicability to pleadings/Effect of/Amendment Act of 1999, Specific Relief Act, Section 40, Limitation Act (1963), Section 3.

Answering the reference, it was held: An amendment of



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C.R.P.No.1549 of 2020

pleadings on damages is not barred by limitation as a rule but depends on facts of each case – Such amendments are mandatory under Section 40(2) of S.R. Act – Such amendments are permissible even after the commencement of trial

Delay in filing the application for amendment of the pleadings is not fatal, when no serious prejudice is shown to have been caused to the opposite party so as to take away any accrued right.”

“6.00. Thus, the oldest golden case law and the latest modern case law by interpreting the law clearly says and clarifies that the settled position is that amendment of pleadings can be allowed at any stage of the proceedings, provided it is necessary for the purpose of deciding the controversies between the parties. They further clarified that even if such an amendment is barred by time, that factor is to be taken into consideration in exercise of the discretion as to whether amendment should be allowed or not and when it does not affect the cause of action and when it does not introduce a new case and when there is no serious prejudice caused to the opposite party and when such amendment is required to do justice, the Court has wide discretionary power to allow such amendment.”

5. The learned Counsel for the Respondents vehemently objected to the submission of the learned Counsel for the Petitioner stating that the facts of the reported judgement of the Full Bench relied on by the Revision Petition is not at all applicable to the facts of this case. The learned Counsel for the Respondents submitted that the Defendants in the suit had filed written statement within six months from the date of receipt of summons. The Defendants had clearly stated that the property had been undervalued. The Plaintiff had mentioned the value of the property as



Rs.5,00,000/- (Rupees Five Lakhs only) whereas the property fetches Rs.5,00,00,000/- (Rupees Five Crores only). Therefore, for the value of the property, the Plaintiff has to pay Court fees.

6. The learned Counsel for the Respondents invited the attention of this Court to the relevant portion of the written statement filed by the second Defendant which reads as under:

“3. So in the properties mentioned in the Suit the Plaintiff is not having a single house plot in his name as on date and so legally he had no locus standi to file the Suit for the properties as he is not at all entitled to the same.

4. Subsequently, the Government has canceled the above said approved layout through the director of country and Town planning and now the above property is tried as agricultural lands and which are in possession of second defendant. Anyhow, the first defendant has sold the property to this second defendant which is not involved in the layout. Anyhow the layout once approved by the Govt. is duly canceled by the Govt. and so the Plaintiff cannot seek any relief with this defendant. The sale deed bearing No.11382/2008 which is in favour of this second defendant executed by first defendant is legal, valid and binding and which is not affecting the plaintiff in any manner and the plaintiff is no way entitled to question about the said sale deed.”

7.He has also invited the attention of this Court to the order of the learned District Munsif, Hosur. The relevant portion of the order is extracted as under:-



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“4.The only point for consideration is whether the Petition is to be allowed or not?

5. Point:-

The learned Counsel for the Petitioner/Plaintiff argued that the proposed amendment to include the schedule of property will not alter the nature of the Suit and no prejudice will cause to both the parties and it will help this Court to determine the real disputes between the parties and hence request this Court to dismiss the application.

The learned Counsel for the respondent/defendant strongly object to the amendment petition and argue that the petitioner kept quiet and dormant for all these years and now came up with this petition only to fill up the lacuna in this case. He further argued that written statement has been filed well before 9 years back and the defendants brought to the notice of the Court and plaintiff that suit property was not included in the suit. But the plaintiff kept quiet and file this petition with delay for more than 9 years which is also hit by law of limitation. Hence the learned counsel request this Court to dismiss the petition.

Heard both sides. Perused the records. No oral and documentary evidence was adduced by both the parties. The petition filed by the petitioner/plaintiff to include the schedule of property in the suit. Admittedly suit is one for declaration to declare doc. no.11382/2008 a sale deed dt.26.08.2008 on the file of SRO, Hosur as null and void. It is not disputed that while filing the suit by the petitioner/plaintiff schedule of property was not given by the plaintiff in the suit averments. Now the petitioner/plaintiff had came up with this petition to include schedule of property in the suit. Apparently, there is no valid reason averred in the petition by the petitioner/plaintiff for not include the schedule of property during the filing of the Suit. On the other hand, the respondent objected that they have filed the written statement and thus they have brought notice to the Court



and the plaintiff that schedule of property was not included in the suit. Upon perusing the suit records it is evident that written statement was filed by 2nd defendant adopted by 1st defendant on 21.07.2009. The said written statement on para 2 is clearly stated that the plaintiff has not given the schedule of property in the suit. So even after the defendant file the written statement brought to the notice to the plaintiff that suit property was not included, the petitioner kept quiet for all these years and file this petition to include the schedule of property only on 07.12.2017 after a long delay of 8 years. The act of petitioner/plaintiff is not a acceptable one since no valid reason was given by the petitioner/plaintiff in the petition for include the schedule of property. The law helps only the vigilant and not dormant litigants. In such event the petition filed by the petitioner/plaintiff is hit by delay and lashes. This Court is not intended to allow this petition for the reasons stated above.

In the result, the petition is hereby dismissed. No cost”
Therefore, invoking the power of this Court under Article 227 of the Constitution of India is not warranted. The order passed by the learned District Munsif, Hosur is a well reasoned order and it does not warrant any interference by this Court.

Point for consideration:

Whether the amendment petition in I.A.No.906 of 2017 in O.S.No.48 of 2009 is to be allowed and the order passed by the learned District Munsif, Hosur, dismissing the I.A.No.906 of 2017 in O.S.No.48 of 2009 is to be set aside as perverse?

8. Heard the learned Counsel for the Revision Petitioner, the learned



C.R.P.No.1549 of 2020

WEB COPY
Counsel for the Respondents and perused the typed set contained the copy of the plaint, written statement, affidavit of the Plaintiff as Petitioner in I.A.No.906 of 2017 in O.S.No.48 of 2009 and the proposed amendment, counter filed by the Defendants in the suit as Respondents in I.A.No.906 of 2017 in O.S.No.48 of 2009 and the order passed by the learned District Munsif, Hosur.

9. On perusal of the plaint averments, it is found that the Plaintiff had clearly claimed title to the suit property and also given details of the property purchased by him under various survey numbers.

10. As pointed out by the learned Counsel for the Revision Petitioner in the concluding paragraph of the plaint, usually in a suit for title, the suit filed regarding dispute between the properties the details of the property is given as a separate schedule but in the plaint filed in O.S.No.48 of 2009 it was left out. May be by inadvertence. After filing of the written statement, the learned Counsel for the Plaintiff had considered those things only before commencement of the trial. Therefore, he had filed I.A.No.906 of 2017 in O.S.No.48 of 2009 seeking to amend the plaint.



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11. As rightly objected by the learned Counsel for the Respondents herein as well as the Respondents before the learned District Munsif, Hosur, the amendment Petition was belatedly filed. The objection of the Defendants/Respondents is justified. At the same time, as pointed out by the learned Counsel for the Petitioner herein and as laid down by the Hon'ble Supreme Court in very many decisions that considering the valuable right of the Plaintiff, the amendment sought for by the Plaintiff in the suit is to be permitted liberally before commencement of the trial. Here admittedly the trial in the suit had not commenced. Therefore, before commencing the trial, the learned Counsel for the Plaintiff on perusal of the plaint and written statement arrives at a conclusion that by inadvertence he had left out to mention the details of the schedule of properties in the plaint and became alert. Therefore, approached the Court by filing Petition seeking amendment. It is true that it is belated. At the same time, before commencement of the trial it has to be considered otherwise the valuable right of the Plaintiff will be lost on technicalities of law even if he succeeds in the suit after full contest. Also it is acceptable principle that for the mistake of appearing Counsels, the litigants shall not suffer. In the light of



C.R.P.No.1549 of 2020

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the reported ruling of the Full Bench of this High Court in **2007-1-L.W. 32** *[M/s.Hi. Sheet Industries -vs- Litelon Limited and others]* the submission of the learned Counsel for the Revision Petitioner is found acceptable. Therefore, the objection made by the learned Counsel for the Respondents in this Revision Petition who is also the Respondents before the trial Judge in the amendment Petition and the Defendants in the suit is rejected in the light of the reported ruling. Since it is a pre-trial amendment, it has to be liberally allowed considering the valuable right of the Plaintiff for protecting his right.

12. In the light of the above discussion, the point for consideration is answered in favour of the Revision Petitioner and against the Respondents. The order passed by the learned District Munsif, Hosur, dismissing the I.A.No.906 of 2017 in O.S.No.48 of 2009 is to be set aside.

In the result, this Civil Revision Petition is allowed.

The order passed by the learned District Munsif, Hosur, dismissing the I.A.No.906 of 2017 in O.S.No.48 of 2009 is set aside. The amendment



C.R.P.No.1549 of 2020

is allowed as per the ruling of the Full Bench of this Court in **2007-1-L.W.**

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32 [M/s.Hi. Sheet Industries -vs- Litelon Limited and others]. The learned District Munsif, Hosur, is directed to proceed further with the trial and dispose off the case as per law as early as possible. Consequently, the connected miscellaneous petition is closed. No costs.

08.03.2024

SRM

Index : Yes/No

Speaking/Non-speaking order

Neutral Citation : Yes/No



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C.R.P.No.1549 of 2020

To

1. The District Munsif,
Hosur, Krishnagiri District.
2. The Section Officer, VR Records,
High Court, Chennai.



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C.R.P.No.1549 of 2020

SATHI KUMAR SUKUMARA KURUP, J.,

SRM

**Order made in
C.R.P.No.1549 of 2020**

08.03.2024