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CRP. No.3460 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.07.2024

PRONOUNCED ON : 26.09.2024

CORAM

THE HONOURABLE **MR.JUSTICE BATTU DEVANAND**

C.R.P. No.3460 of 2022

A.K.Raghupathi Naidu

... Petitioner/plaintiff

Vs.

1.The District Collector,
Thiruvallur District,
Thiruvallur-602 001

2.The Tahsildar,
Thiruvallur District,
Thiruvallur-602 001

..... respondents

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order dated 24.06.2022 passed by the learned Additional District Munsif, Tiruvallur in IA.No.1 of 2021 in O.S No.124 of 2016.

For Petitioner	: Mr.P.Vasudevan
For Respondents	: Dr.S.Suriya, AGP

ORDER



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This Civil Revision Petition has been filed to set aside the fair and decretal order dated 24.06.2022 passed by the learned Additional District Munsif, Tiruvallur in IA.No.1 of 2021 in O.S No.124 of 2016, in and by which, the application filed under Order VI Rule 17 CPC filed by the petitioner herein seeking to amend the plaint, came to be dismissed.

2. The petitioner herein is the plaintiff in the suit in O.S.No.124 of 2016. He filed a suit for permanent injunction against the respondents herein, who are the defendants in the suit. According to the petitioner, his father Thiru.Kutti Naidu purchased item no.1 of the suit schedule properties by way of a registered sale deed dated 19.03.1973 from one Mrs.Kannammal and her children. The item no.2 of the suit schedule properties was belonged to one Saraswathi Ammal and the plaintiff's father was cultivating the same as a tenant. During partition between the plaintiff and his father and brothers, the suit schedule item no.1 property was allotted to the share of the petitioner/plaintiff by a partition deed dated 29.04.1981 and the cultivation of item no.2 land was also handed over to the petitioner/plaintiff. As such, the petitioner/plaintiff has been in possession and enjoyment of both item nos.1 and 2 of the suit schedule properties from



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the year 1981 onwards. According to the petitioner, after the demise of Mrs.Saraswathi Ammal, who was the owner of item no.2 land, her legal heir Mr.M.Vijaya Kumar, through his Power Agent executed an agreement of sale in favour of the petitioner/plaintiff for a sale consideration of Rs.9,87,000/- and the petitioner also paid the same and took the possession. The vendor agreed to execute the sale deed in favour of the petitioner as and when called for. Therefore, the petitioner has become the owner of the suit schedule properties item nos.1 and 2 and has been in lawful possession and enjoyment of the suit properties.

3. The case of the petitioner is that during resettlement of survey of lands, the properties in S.No.115/2 were wrongly classified as "Anadheenam" instead of dry patta lands and the respondents took coercive steps to evict the petitioner from the suit properties on the ground that the petitioner is an encroacher of the same and also issued a notice dated 20.03.2005 directing the petitioner to vacate the suit properties. Aggrieved by the same, the petitioner filed a petition in W.P.No.14615 of 2015 and this Court by order dated 13.05.2015 directed the parties to maintain status quo. However, despite the interim order of this Court, the respondents attempted



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to evict the petitioner. Hence, the petitioner has filed a suit in O.S No.124 of 2016.

4. During the pendency of the suit, the petitioner has moved an Interlocutory Application in I.A No.1 of 2021 under Order 6 Rule 17 CPC, praying to permit the petitioner to amend the plaint by adding the prayer in the plaint i.e., for declaration:

(a) to declare the plaintiff's right, title and interest over the suit schedule item no.1 and for permanent injunction against the respondents,

(b) to declare the plaintiff's possessory right over the suit schedule item no.2 property and consequentially for grant of permanent injunction against the respondents herein.

5. According to the petitioner, the respondents have no right or title over the suit schedule item no.1, hence the petitioner sought for declaration. Likewise, as regards the item no.2 is concerned, according to the petitioner, he paid the entire sale consideration to the original owner of item no.2 and got the possession of the same and being the agreement holder in respect of



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item no.2, the suit was filed against the respondents. The respondents have no title since the suit schedule item no.2 land was not classified as "Anadheenam". Hence, he sought for declaration.

6. The said application was resisted by the respondents by filing a counter affidavit, stating that pursuant to the directions of this Court in the Writ Petition, the representation of the petitioner was considered and rejected. The item no.2 of the suit lands were classified as "Anadheenam" from the year 1975 itself. The petitioner, by way of amendment is trying to change the entire cause of action and the nature of the suit by introducing new several facts, which are barred by limitation. The suit itself is not maintainable as the respondents have already issued notice dated 20.03.2015, under Sections 6 and 7 of the Tamil Nadu Land Encroachment Act 1905 since the petitioner is an encroacher. Further, the petitioner sought for an amendment of the plaint after commencement of the trial, which is not permissible as it is barred by limitation. Therefore, the respondents sought for dismissal of I.A.

7. The Trial Court, on consideration of the submissions made on



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behalf of the petitioner, vide order dated 24.06.2022 dismissed the I.A.

Questioning the same, the petitioner has come forward with the present Revision Petition.

8. The learned counsel for the petitioner would submit that the order of dismissal of the interlocutory application claiming for amendment in the plaint by the learned Additional District Munsif, Tiruvallur is against the principles of law and unsustainable under law. The Trial Court erroneously held that the proposed amendment is unsustainable. He further submits that the Trial Court ought to have allowed the interlocutory application by permitting to amend the prayer in the suit. The Trial Court ought to have seen that only during the pendency of the above suit, the cause of action for seeking declaration of title arose and therefore ought to have entertained the interlocutory application.

9. The learned counsel contends that the Trial Court has failed to consider the fact that there are several registered deeds in respect of the suit schedule properties and that there was a decree in favour of the plaintiff vendor's settler in C.S.No.70 of 1956, dated 17.11.1964 and the suit



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properties were already converted into house sites and subsequently the third parties have purchased plots and constructed pucca terraced house thereon.

10. He further contends that the Trial Court failed to consider that the respondents would not be put to irreparable loss or hardship if the petition is allowed. On the other hand, a serious prejudice will be caused to the petitioner.

11. Relying on the judgment reported in 2015 (6) CTC 562 in ***L.C.Hanumnthppa vs. H.B.Shivakumar***, wherein the Apex Court has crystallised the position and other legal aspects in allowing the amendments under Order VI Rule 16 and 17 of CPC, the learned counsel for the petitioner sought to set aside the order dated 24.06.2022 passed by the learned Additional District Munsif, Tiruvallur in I.A.No.1 of 2021 and allow the Civil Revision Petition.

12. On the other hand, the learned counsel for the respondents would



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contend that the suit lands were already classified as “Anadeenam” land from 1975 to till date. There were several representations made by the petitioner to reclassify the land and the same was rejected by the respondents. In compliance of the order of this Court in W.P.No.14615 of 2015, the representation of the petitioner was considered and it was rejected by the respondents and the rejection order has become final.

13. The learned counsel further contends that by filing amendment petition, the petitioner is trying to change the entire cause of action and nature of the suit and he is introducing several new facts, which are barred by limitation. He further submits that the present suit itself is not maintainable as the petitioner was issued notice dated 20.03.2015 under Section 6 and 7 of the Tamil Nadu Land Encroachment Act 1905. The relief sought in the petition is to amend several paragraphs in the plaint and the prayer is not permissible in Law.

14. Finally, the learned counsel submits that the petitioner is not permissible to develop his case later by way of amendment and submits that



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the Trial Court rightly dismissed the amendment petition filed by the petitioner and the interference of this Court against the Trial Court order, is not required.

15. Having heard the submissions of the respective counsels and on perusal of the record it appears that the petitioner filed suit for permanent injunction stating that he is the owner of the suit schedule properties viz., item 1 by way of partition deed dated 29.04.1981 and he has entered into sale agreement in respect of Item No.2. Since then he is in possession and enjoyment of the suit properties. The defendants classified the land as “anatheenam” and issued encroachment notice. The defendants filed written statement stating that the suit property is classified as “anatheenam” even before 1972 and accordingly, the encroachment notice was issued and hence, the Civil Suit is barred under Section 14 of the Tamil Nadu Land Encroachment Act and the suit itself is not maintainable.

16. The Trial Court in suit proceedings framed an issue regarding maintainability of the suit under Section 14 of the Tamil Nadu Land



Encroachment Act as one of the issues. Thereafter, the suit was posted for trial. At that stage, the petitioner filed a petition seeking amendment of the plaint for inclusion of the relief of declaration of title in respect of item 1 and declaration of possessory right in respect of item 2 mentioned property.

17. At this stage, it is necessary to look into the Order VI Rule 17 CPC, which is extracted hereunder:

“Or. VI R. 17 CPC - Amendment of Pleadings - The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be 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.”

18. On bare reading of the above provision, it is clear that the Court may at any stage of the proceedings allow either party to alter or amend the pleadings to determine the real questions in controversy between the parties. It is also provided that no application for amendment shall be allowed after



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the trial has commenced.

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19. In the present case, admittedly, the suit is in the stage of trial and the trial has not yet commenced. Accordingly, the amendment of plaint is permissible at that stage as per the above provision. But the Trial Court considered the issue whether the proposed amendment is just or is it necessary for conclusively adjudication of dispute in the suit. While deciding the said issue, the Trial Court came to the opinion that the proposed amendment would change the nature of suit and it would introduce a new case and under these circumstances, if this petition is allowed, then great prejudice will be caused to the defendant. As the proposed amendment is not necessary for conclusively adjudication of primary dispute in the suit and accordingly, dismissed the amendment petition.

20. As seen from the records, the suit was filed seeking permanent injunction. After filing of written statement by the defendants in the suit, the plaintiff filed amendment petition under Order VI Rule 17 of CPC to amend the plaint for inclusion of the relief of declaration of title. In view of the fact that the defendants in the suit have raised a ground that the subject property



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was classified as “anatheenam” land and a notice was issued to the plaintiff for encroachment under Section 14 of the Tamil Nadu Land Encroachment Act, the Trial Court has framed the issue regarding maintainability of the suit also. On consideration of the grounds raised by the defendants, the plaintiff intends to file amendment petition seeking the relief of declaration. Admittedly, the amendment petition was filed at the stage, when the suit was posted for trial, but it is admitted by the learned counsel appearing on either side during the course of hearing of Civil Revision Petition that the trial in the suit has not yet commenced. Under these circumstances, the amendment sought in the suit has to be considered for proper effective adjudication of the case. The Trial Court ought to have considered that rejecting the request of the plaintiff for amendment leads to injustice or leads to multiple litigation.

21. In ***Revajeetu Builders and Developers vs. Narayanaswamy and Sons and others*** reported in 2009 10 SCC 84, the Hon'ble Apex Court held that the plaint shall be amended to avoid multiplicity of proceedings.



22. The Trial Court while dismissing the amendment petition observed that as the issue regarding maintainability of the suit under Section 14 of the Land Encroachment Act is framed, the proposed amendment is not necessary. The Trial Court is of the opinion that once the jurisdiction of the Civil Court is ousted, then other issues does not arise. The Trial Court also expressed its opinion that the proposed amendment has changed the nature of the suit and it has introduced a new case and thereby if amendment is allowed, then prejudice will be caused to the defendants.

23. But on facts, it appears that the vendor's settler of the plaintiff had got title in pursuance of the decree passed by the High Court of Madras in CS.No.70 of 1956 dated 17.11.1964. But in the written statement, the defendants denied the title, over the suit schedule property by the plaintiff and his vendor's title deeds, which were duly registered on the file of the concerned officer of Sub Registrar. As and when the plaintiff claiming title over the property in the light of the decree passed by this Court in C.S.No.70 of 1956 dated 17.11.1964 and the registered deeds and documents in respect of the suit schedule properties and the denial of title of the petitioner of the suit schedule properties by the defendants, it is very necessary and essential to the plaintiff's to seek the relief of declaration of title of the suit properties



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in the interest of justice. Even after amendment of the plaint, the defendants can prosecute their case in the trial to establish whether the suit schedule properties are classified as “anatheenam” or not. There is no dispute with respect to the position of the suit schedule property. Under the circumstances, no prejudice will be caused to the defendants if amendment of the plaint is permitted.

24. Though there are several contentions raised on both sides, considering the fact that the trial has not yet commenced at the time of filing of the petition under Order VI Rule 17 of CPC, this Court is of the considered opinion that the order dated 24.06.2012 in I.A.No.1 of 2021 in O.S No.124 of 2016 passed by the learned Additional District Munsif, Tiruvallur has to be set aside to meet the interest of justice and to avoid multiplicity of litigation and for proper and effective adjudication of the case.

25. For the aforesaid reasons, this Civil Revision Petition is allowed and the order dated 24.06.2022 passed by the learned Additional District Munsif, Tiruvallur in IA.No.1 of 2021 in O.S No.124 of 2016 is hereby set



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aside.

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BATTU DEVANAND.J.,

pvs

To

The learned Additional District Munsif, Tiruvallur

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