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C.R.P. No.3420 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.07.2024

CORAM

THE HONOURABLE Mr. JUSTICE P.DHANABAL

C.R.P. No.3420 of 2022

and C.M.P. No.18193 of 2022

Periyasamy S/o. Ramasamy

..... Petitioner

Vs.

1.Srinivasan S/o. Ramu Kounder

2. Vijayakumar S/o. Ramu Kounder

...Respondents

PRAYER: The Civil Revision Petition is filed under Section 227 of

Constitution of India praying to set aside the fair and decretal order in I.A.

No.14 of 2021 in A.S.No.30 of 2012 dated 12.08.2012 on the file of the

Additional Subordinate Court, Tindivanam.

For Petitioner : Mr. D. Vasanth for Mr. N. Suresh

For Respondents : Mr. T. Dhanasekaran

ORDER

This Civil Revision petition is filed challenging the order passed in I.A.

No.14 of 2021 in A.S. No.30 of 2012 on the file of Additional Subordinate

Court, Tindivanam dated 12.08.2012, wherein the respondent herein has filed

a petition before the I Appellate Court to amend the prayer of the plaint and

the same was allowed. Against which, the present civil revision petition is



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filed.

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2. The petitioner is the defendant in the main suit and the respondents are the Plaintiffs in the Suit and they filed the Suit for declaration of Sale deed and for permanent injunction and the said Suit was dismissed. Against which, the plaintiffs preferred an appeal in A.S. No.30 of 2012. While pendency of the Suit, the appellants filed a petition to amend the prayer of the plaint for the relief of recovery of possession and the same was allowed. According to the petitioner, the said amendment will alter the nature and character of the Suit and the petitioners have not stated valid reasons to file amendment, but the Trial Court without considering the same, allowed the petition. Hence the present civil revision petition is filed.

3. According to the respondents, they filed the Suit for declaration of sale deed as null and void and also for permanent injunction, but the Trial Court dismissed the Suit as devoid of merits. Against which, they filed an appeal. In the said appeal, they filed an amendment petition to amend the prayer for recovery of possession and the proposed amendment will not change and alter the nature and character of the Suit and the Trial Court also, after taking into consideration the facts and circumstances of the case, rightly



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allowed the application. Therefore, the present civil revision petition is liable to be dismissed.

4. The learned counsel appearing for the petitioner would contend that the respondents have filed the Suit for the relief of declaration of sale deed and for permanent injunction and the same was dismissed. Against which, an appeal was preferred by the Plaintiffs and in the said appeal, they filed an amendment petition to amend the prayer of the plaint for recovery of possession and the said prayer is barred by limitation and it will alter the nature and character of the Suit. But the Trial Court without considering the same, erroneously allowed the petition and the same is liable to be set aside.

5. The learned counsel appearing for the respondents would contend that already they filed a Suit before the Trial Court for the relief of declaration of sale deed and for permanent injunction and the same was dismissed. Against which, they filed an appeal and in the said appeal, they filed an amendment application to amend the prayer of the suit for the relief of recovery of possession and the said proposed amendment will not alter the nature and character of the Suit and hence the Trial Court has allowed the application by observing that by allowing the application, no prejudice would



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be caused to the other side. The said order passed by the Trial Court is in order and hence the present civil revision petition is liable to be dismissed.

6. Heard both sides'. Perused all the materials available on record.

7. It is an admitted fact that the respondents herein have filed a Suit for relief of declaration of sale deed and for permanent injunction and there is no relief sought for declaration of title over the property. Before the Trial Court, the respondents have not sought for any relief either for declaration of title or for relief of recovery of possession and after 12 years from the date of filing of the Suit, they have filed the amendment petition before the I Appellate Court for the prayer of declaration of title and there is no reasons stated by the respondents herein to file such an application after a long delay. Further, the relief sought for is amendment in the plaint prayer for the relief of recovery of possession. Before the Trial Court, they only filed Suit seeking relief of declaration of sale deed and for permanent injunction. Therefore, the proposed amendment in the prayer of the Suit will definitely alter the nature and character of the Suit and the Trial Court, without considering the said aspects, has erroneously allowed the application.

8. At this juncture, the learned counsel appearing for the petitioner has



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relied upon judgment in ***Anthony samy vs. 1. Christoraj and 2. Leela Mary***

reported in 2013 SCC Online Mad 1172, wherein this Court in para 15 held

as follows:-

“15. It is true that an amendment can be permitted to avoid, multiplicity of proceedings. But at the same time, Courts have held that an amendment cannot be allowed, if it causes prejudice to the right of the party against whom an amendment is sought for. It is also a settled law, that the scope of the appellate Court is to test the correctness of the judgment under the appeal and any benefit or vested right, on account of declaration of the rights, inter se between the parties to the list, by the trial Court, cannot be allowed to be taken away by allowing in an amendment to the pleadings, at the appellate stage, when the party seeking an amendment could have brought in such amendment, even at the time of the commencement of the trial. An amendment admitting to wipe out the pleadings and admissions of the party, already considered by the Trial Court, for the purpose of arriving at a decision, in the Suit, cannot be allowed to be substituted with a new case, at the appellate stage, which would certainly cause serious prejudice to the party, against whom the amendment is sought for. The effect of an admission in earlier pleading shall not be permitted to be taken away, by any proposed amendment”.

9. On careful perusal of the judgment, it is clear that the scope of the appellate Court is to decide the correctness of the judgment and appeal and any benefit or vested right, on account of declaration of the rights inter se between the parties to the lis, by the Trial Court can not be allowed to be substituted with a new case, at the appellate stage, when the party seeking an amendment could have brought in such amendment, even at the time of the commencement of trial. An amendment admitting to wipe out the pleadings and admissions of the party, already considered by the Trial Court, for the



purpose of arriving at a decision, in the Suit, cannot be allowed to be substituted with a new case, at the appellate stage, which would certainly cause prejudice to the opposite party.

10. In the case on hand also, already the Suit was dismissed and before the Trial Court, the parties have not taken any steps to amend the plaint prayer and after lapse of 13 years from the date of filing of the Suit, the present amendment petition has been filed at the appellate stage. Therefore, the said case law is squarely applicable to the present facts of the case.

11. The learned counsel appearing for the respondents has relied upon judgment reported in *M.Y. Eqbal and Amitava Roy reported in AIR 2015 Supreme Court 2270*, wherein the Hon'ble Supreme Court held as follows:-

"20. It is well settled that rules of procedure are intended to be a handmaid to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of rules of procedure. The Court always gives relief to amend the pleading of the party, unless it is satisfied that the party applying was acting malafide or that by his blunder he had caused injury to his opponent which cannot be compensated for by an order of cost".

12. On careful perusal of the judgment, it is clear that the party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of rules of procedure. The Court always gives relief to amend the pleading of the party, unless it is satisfied that the party



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applying was acting malafide or that by his blunder he had caused injury to his opponent which cannot be compensated for by an order of cost.

13. In this case, the Plaintiffs have not taken any steps before the Trial Court and after 13 years, they filed application without stating any valid reasons. Further the amendment is in respect of the prayer for relief of possession and it will certainly alter the nature and character of the Suit. Therefore, the above said case law is not applicable to the present facts of the case. The Trial Court without considering the above said aspects, simply allowed the petition without discussing anything about the pleadings and facts of the case, by stating that by allowing the application, no prejudice would be caused to the other side”. Therefore, the order passed by the I Appellate Court is unsustainable and the same is liable to be set aside.

14. Therefore, as discussed above, this Court is of the opinion that the order passed by the I Appellate Court is liable to be set aside by allowing the present civil revision petition.



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15. In the result, the civil revision petition is allowed. The order passed in IA. No. 14 of 2021 in A.S. No.30 of 2012 dated 12.08.2012 on the file of the Additional Subordinate Court, Tindivanam is set aside. No costs. Consequently, the connected miscellaneous petition is closed.

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Index : Yes/No
Speaking order/non-speaking order
mjs

To

The Additional Subordinate Court, Tindivanam..

P.DHANABAL, J.,

mjs



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