



C.R.P.No.3776 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2024

CORAM:

THE HONOURABLE MR. JUSTICE P.DHANABAL

C.R.P.No.3776 of 2022
and C.M.P.No.19906 of 2022

R.Rajendran
Petitioner

..

Vs.

1. R.Ambika
2. M.S.Rajendran

.. Respondent

Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 11.10.2022 in I.A.No.01 of 2022 in O.S.No.72 of 2020 on the file of the III Additional District and Sessions Judge, Cuddalore at Vriddhachalam.

For Petitioner : Mrs.A.L.Ganthimathi
Senior Counsel
for Mr.L.Palani Muthu

For Respondents : Mr.D.Rajagopal for R1 and R2



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ORDER

This Civil Revision Petition has been filed as against the order passed in I.A.No.1 of 2022 in O.S.No.72/2020 on the file of the III Additional District and Sessions Judge, Cuddalore, wherein the petitioner herein has filed a petition before the trial Court to amend the plaint and the same was dismissed. Against which the present Civil Revision Petition has been filed.

2. The case of the petitioner is that he is the plaintiff in the main suit and he filed the suit for the relief of recovery of money for a sum of Rs.1,55,00,000/- as against the respondents herein. In the plaint, the earlier counsel failed to plea certain vital points which are essential to prove the case. The respondents / defendants in their written statement have stated that the suit is based on imaginary cause of action because of the fact that the earlier debt of borrowings for a sum of Rs.75,00,000/- are not mentioned in the plaint. In fact, the first respondent / first defendant had borrowed a sum of Rs.75,00,000/- from the petitioner on 01.02.2017, 03.02.2017 and 10.02.2017 in the presence of the second respondent / second defendant and had executed three promissory notes in favour of the petitioner. Subsequently, on 17.04.2017 and 20.04.2017 the first



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respondent borrowed a further sum of Rs.85,00,000/- from the petitioner.

Totally, the first respondent had borrowed a sum of Rs.1,55,00,000/- from the petitioner and also agreed to pay 24% interest per annum. In total, the respondents are bound to pay a sum of Rs.2,63,83,530/-. Thereafter, the respondents threatened the petitioner and thereby, he preferred a complaint before the Superintendent of Police, Cuddalore and enquiry was conducted on 09.09.2019 and compromise was arrived and a total interest of Rs.1,08,83,582/- was waived and the respondents executed a fresh comprehensive loan document for a sum of Rs.1,55,00,000/- on 09.09.2019. At the time of execution of loan document all the pro-notes executed by the first respondent in favour of the petitioner were received by the respondents from the petitioner. The loan document was attested by the Notary Public on 10.09.2019. All the above said points have to be pleaded in the plaint which are important to prove the case. Hence, he filed a petition for amendment. Further the cause of action, the details of valuation and also the prayer for decree for specific performance also to be included by way of amendment.

3. The respondents filed their counter before the trial Court stating



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that the contention of the petitioner about blaming the counsel for leaving out important vital points in the plaint should not be entertained. The averments made in the affidavit that the respondents earlier borrowed a sum of Rs.75,00,000/- from the petitioner and thereafter, borrowed a sum of Rs.80,00,000/- are all concocted story. Further, it is false to state that the respondents threatened the petitioner and thereby, he gave a complaint and there was a compromise and based on the compromise they executed a deed. The amendment sought is to delete the cause of action part and wanted to insert new amount and create fresh cause of action and the petitioner wanted to convert the money suit into a suit for specific performance of contract. Therefore, the amendment will alter the nature and character of the suit. The claim of the petitioner is barred by limitation. Therefore the petition is liable to be dismissed.

4. Before the trial Court no oral or documentary evidence were adduced by either side and trial Court after hearing both sides, dismissed the petition.

5. The learned Senior Counsel for the petitioner would contend that



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the petitioner is the plaintiff in the main suit and he filed a suit for the relief of recovery of money based on the loan documents executed by the respondents dated 09.09.2019. At the time of filing the suit the plaintiff only sought for the relief of recovery of money for a sum of Rs.1,55,00,000/-. During the pendency of the suit, the plaintiff has filed a petition to amend the plaint by including the prayer for specific performance and the valuation and to include the description of property as about the shares of the respondents. The trial Court dismissed the petition. The proposed amendment will not alter the nature and character of the suit. Since the petitioner has already filed a money suit by amending the plaint for the relief of specific performance no prejudice would be caused to the other side. But the trial Court failed to consider the same and erroneously dismissed the petition.

6. The learned Senior Counsel for the petitioner relied on the following judgments:

i) S.Chellathurai Vs. Chidambaram Chettiar and another reported in **2007 (4) CTC 128**

ii) O.P.Ravindran Vs. M.S.Subbaiah and another reported in **2021**



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(3) CTC 274

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7. The learned counsel for the respondents would contend that the petitioner has filed the suit for the relief of recovery of money and thereafter he filed an application to amend the suit to include the prayer for specific performance and the proposed amendment will alter the nature and character of the suit. The proposed amendment will introduce new cause of action and thereby, it is not permissible under law. The trial Court, in this aspect after elaborate discussion, rightly dismissed the petition. Therefore, the petition is liable to be dismissed.

8. In support of his above contentions, the learned counsel for the respondents relied on the following judgments:

i) Basavaraj Vs. Indira and others in Civil Appeal No.2886 of 2012 dated 29.02.2024

ii) M.Revanna Vs. Anjanamma (dead) by lrs. & others in Civil Appeal No.1669 of 2019 dated 14.02.2019

iii) Surana Vijay Finance, rep. by its Proprietor Vs. D.B.Prakash



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Chand Jain and others reported in 2012 (1) MWN (Civil) 478

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9. This Court heard both sides and perused the materials available on record.

10. According to the petitioner he is the plaintiff in the main suit and he filed the main suit for the relief of recovery of money and thereafter he filed a petition under Order 6 Rule 17 CPC to amend the plaint. The main amendment is in respect of prayer for specific performance and the valuation and inclusion of discussion of property. The plaintiff mainly filed this suit based on the document and in the said document itself there is a recital that if they fail to pay the amount they would sell the property to the petitioner. While so the petitioner ought to have filed the suit at the earliest point of time and he only filed the suit for recovery of money without seeking the prayer for specific performance. Now, he has filed the petition to amend the prayer. The proposed amendment will alter the nature and character of the suit and also introduce new cause of action and thereby amendment cannot be permitted. At this juncture, the learned Senior Counsel for the petitioner relied on the following judgment:



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i) *S.Chellathurai Vs. Chidambaram Chettiar and another* reported in 2007 (4) CTC 128

ii) *O.P.Ravindran Vs. M.S.Subbaiah and another* reported in 2021 (3) CTC 274

11. On a careful perusal of the above judgments it is clear that object of rule is to allow all amendments necessary for determining real question in controversy provided that it does not cause injustice or prejudice to other side and the Court should not go into correctness or falsity of main case. It should not record the findings on merits of amendment.

12. Per contra, the learned counsel for the respondents relied on the following judgments:

i) *Basavaraj Vs. Indira and others in Civil Appeal No.2886 of 2012 dated 29.02.2024*

ii) *M.Revanna Vs. Anjanamma (dead) by lrs. & others in Civil Appeal No.1669 of 2019 dated 14.02.2019*

iii) *Surana Vijay Finance, rep. by its Proprietor Vs. D.B.Prakash*



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On a careful perusal of the above judgments it is clear that the following factors are to be taken into consideration by the Court while dealing with an application for amendment. One of the important fact is as to whether the amendment would cause prejudice to the other side or it fundamentally changes the nature and character of the case or a fresh suit on the amended claim would be barred on the date of filing of the application. In the case on hand also already the suit is filed for recovery of money. Now the plaintiff wanted to amend the prayer for specific performance of contract and it will certainly cause prejudice to the other side and also alter the nature and character of the suit. Therefore, the amendment petition cannot be allowed. In this context, after elaborate discussion, the trial Court has rightly dismissed the petition. Therefore the order passed by the trial Court is in accordance with law and no perversity or infirmity is found in the order passed by the trial Court and it does not warrant interference.

13. In view of the above discussion, this Court is of the opinion that



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the present petition deserves to be dismissed as devoid of merits.

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14. Accordingly, the Civil Revision Petition is dismissed. No costs.

Connected miscellaneous petition is closed.

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Index: Yes / No

Speaking order / Non speaking order

Neutral Citation : Yes / No

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The III Additional District and Sessions Judge,
Vriddhachalam,
Cuddalore.



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P.DHANABAL, J.,

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