



CRP No.4334 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.04.2024

CORAM

THE HON'BLE MR. JUSTICE **P.DHANABAL**

C.R.P. No.4334 of 2022

and

C.M.P. No. 22790 of 2022

1.Kannupaiyan

2.Karthikeyan

....

Petitioners

Vs

1. Pandiyarajan

2. S.Pachamuthu

3. S.Shanmugam

4. M.Palanisamy

....

Respondents

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside fair and decreetal order dated 21.11.2022 made in I.A.No.4 of 2022 in O.S.No.66 of 2020 on the file of District Munsif-Cum-Judicial Magistrate of Edappadi by allowing this Civil Revision Petition.

For Petitioners : Mr.R.Marudhachalamurthy

For Respondents : Mr.C.Kulanthaivel

ORDER

This Civil Revision Petition is filed by the petitioner to set aside the order passed in I.A.No.4 of 2022 in O.S.No.66 of 2020 wherein the



petitioners herein have filed the petition under Order 6 Rule 17 and under Section 151 of the Code of Civil Procedure to amend the plaint prayer and the same was dismissed by the trial Court.

2. As against the order passed by the trial Court, the unsuccessful petitioners have filed this Civil Revision Petition.

3. According to the the petitioners' they are the plaintiffs' in the suit and filed the suit for the relief of permanent injunction and while preparing for arguments, they were advised to mould the relief that the relief of not to evict the plaintiffs except due process of law. In fact, they sought for the relief of permanent injunction restraining the defendants from interfering with the plaintiffs peaceful possession and enjoyment of the A and B suit properties. The defendants claim is based on the guise of sale deeds in their favour through their vendors deed dated 20.02.1984. The said sale deeds had not acted upon and they never took possession of the suit properties and the petitioners alone all along in possession and enjoyment of the properties. Patta and kist also stands in their name. In order to avoid technical aspect, they mould the relief that they should not be dispossessed from the suit properties except under due



process of law. The respondents at recent times proclaimed that very soon they are going to dispossess the plaintiffs from the suit properties.

Therefore, the petitioners sought for lesser relief of permanent injunction granting an order of permanent injunction restraining the defendants and their men from in any way any manner dispossessing the plaintiffs from the 'A' and 'B' scheduled of the suit properties except under due process of law. Hence, they filed the present petition for amendment in the prayer and the valuation para.

3.1. But the trial Court without considering the real issue on technical aspects, dismissed the petition on the ground that already the trial was commenced and evidence of both side is completed and the main suit is ripe for arguments and therefore the petition is squarely hit by proviso clause to Order 6 Rule 17 of CPC and also there is not much difference between the relief of permanent injunction and due process of law. Hence, the above said order passed by the trial Court is erroneous and is liable to be set aside.

4. According to the respondents, the first petitioner and his parents sold the suit properties to one Ramasamy and Lakshmanan on 20.02.1984 itself. Subsequently, the petitioners had no manner of right



in those properties. The said Ramasamy and Lakshmanan were in possession and enjoyment of the suit properties. The said Ramasamy nominated one Thamilselvan to sell his properties on 13.07.2009.

4.1. While so, the legal heirs of the Lakshmanan including Thamilselvan sold the said properties purchased by the Ramasamy and Lakshmanan to the respondents for valuable considerations. In order to prevent the sales of the legal heirs of the Lakshmanan, the petitioners already created a partition deed on 30.08.2009 and based on the partition deed, the petitioners filed the suit for the relief of bare injunction. After the sale of suit properties in the year 1984, the petitioner have no right, title or interest in the suit properties. The petitioners are not in possession and enjoyment of the suit properties.

4.2. The petitioners have not challenged the sale deeds dated 20.02.1984 and 31.12.2009 and power of attorney deed dated 13.07.2009. The respondents are in possession and enjoyment of the suit properties. Therefore, the trial Court after taking into consideration of the contentions of both sides dismissed the petition on the ground that already the trial was commenced and the suit is posted for arguments and this petition is not maintainable and thereby dismissed the petition. Therefore, the present revision petition is liable to be dismissed.



5. The learned counsel appearing for the petitioner would contend that they have already filed the suit for bare injunction and now they have sought for amendment of lesser relief that not to dispossess them except under due process of law and their amendment will not alter the nature of the suit. But the trial Court failed to consider the same and thereby the order of the trial Court is liable to be set aside.

6. The learned counsel appearing for the respondents would contend that the petitioners have filed suit for bare injunction in the year 2020 and thereafter, they filed petition for amendment of prayer in the year 2022, after the completion of the trial. Before the trial court, both sides, witnesses were examined and the documents were marked. At the stage of arguments, they have filed the petition only to delay the proceedings and the trial Court also after considering the submissions dismissed the petition. Therefore, the petition is liable to be dismissed.

7. This Court heard both sides and considered the rival submissions made on either side and perused the materials available on record.



8. The main contention of the petitioners is that they sought for amendment of the prayer from larger relief to lesser relief and already they sought for the relief in prayer for permanent injunction restraining the defendants from interfering with the plaintiffs'/petitioners' possession and enjoyment of the suit properties and now restricted the prayer not to evict the petitioners'/plaintiffs' from the suit properties without due process of law.

9. It is the admitted fact that already both side evidences were completed and the matter is posted for arguments. The trial Court after considering the stage of the case that already both side evidences completed and the case is posted for arguments and at this stage filed petition for amendment of prayer and declined the prayer of the petitioner. However, the trial Court itself observed that there is not much difference between the relief of permanent injunction and due process of law. While so, the trial Court, if come to the conclusion that the petitioners' are in possession and enjoyment of the properties, the trial Court can mould the relief that should not be dispossessed from the suit properties except under due process of law.



10. In support of the contention, the learned counsel for the petitioner would rely on the judgment of ***Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited and another*** reported in ***2022 SCC Online Sc 1128*** wherein the Hon'ble Supreme Court held as follows:

“(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 in divesting of the other side of a valuable accrued right (in certain situations).

(viii) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.

(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.”

11. On a careful perusal of the judgment relied upon by the learned counsel for the petitioner, it clearly shows that there is a bar to amend the prayer, if the nature of the suit or the cause of action is altered and the prayer must be dis-allowed, where the amendment is only with respect to the relief in the plaint, and is predicated on the facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.

12. In the present case on hand, the petitioners sought for the relief of permanent injunction and thereafter sought for amendment of prayer not to evict “except under due process of law”. The case is posted for arguments after completion of both side evidences, at this stage the petitioner filed the amendment petition and now the case is posted for judgment. Therefore, at this stage it is not appropriate to allow this



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petition. The petitioners also not filed the petition at the earliest point of time and filed this petition belatedly. As rightly observed by the trial Court, there is not much difference between the relief of permanent injunction and due process of law and if plaintiffs are able to prove their possession, then, the trial Court can mould the relief for not to evict the plaintiffs except under due process of law.

13. With the above said observations, this civil revision petition is disposed of. No costs. The connected miscellaneous applications shall stand closed.

08.04.2024

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

dpa

Note : Issue order copy on 10.04.2024

To

The District Munsif-Cum-Judicial Magistrate,
Edappadi.



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P.DHANABAL,J.

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