



WEB COPY



C.R.P.(MD)No.88 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 21/02/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

C.R.P (MD) No.88 of 2024

and

CMP (MD) No.424 of 2024

1.Sudali @ Sasikala
2.Chellammal
3.Manthramurthy
4.Devaraj

: Petitioners/Petitioners/
Plaintiffs

Vs.

1.The Tahsildar,
Eral Taluk,
Thoothukudi District.

2.The State of Tamil Nadu
by its District Collector,
Office at Korapallam,
Thoothukudi District.

: Respondents 1 and 2/
Respondents 1 and 2/
Defendants 1 and 2

3.Ganesan

: Respondent No.3/
Respondent No.3/
Defendant No.3

PRAYER:-Civil Revision Petition has been filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order in IA No.5 of 2023 in OS No. 8 of 2020 on the file of the District Munsif, Srivaikundram, dated 19/10/2023.

For Petitioners : Mr.S.Ramesh

For R1 and R2 : Mr.J.Ashok
Additional Government Pleader

For 3rd Respondent : Mr.N.Vallinayagam



C.R.P.(MD)No.88 of 2024

O R D E R

WEB COPY

This civil revision petition has been filed seeking to set aside the fair and decreetal order, dated 19/10/2023 passed in IA No.5 of 2023 in OS No.8 of 2020 by the District Munsif, Srivaikundram.

2.The facts in brief:-

A suit in OS No.8 of 2020 was filed by the petitioners as plaintiffs seeking the relief of declaration that they are the sole legal heirs of the deceased Vaikundaramasamya Pillai. Originally, Tashildar, Eral Taluk and the District Collector, Tuticorin were arrayed as party defendants. Later, one Ganesan filed an application to implead himself as party defendant. That came to be allowed by the trial court. He filed written statement. Pending further process, the present petition in IA No.5 of 2023 was taken out by the petitioners to amend the original plaint. That came to be dismissed by the trial court, by order, dated 19/10/2023.

3.Aggrrieved over the same, this civil revision petition has been preferred.

4.Heard both sides.



WEB COPY



C.R.P.(MD)No.88 of 2024

5.The facts narrated in the plaint namely in the original plaint runs as follows, as amended subsequent to the adding of the third defendant;-

One Vaikundaramasamy Pillai belongs to Kotarakurichi village. He married one Gandhimathi Ammal. That was the first marriage. Through the first marriage, the above said Vaikundaramasamy Pillai had no children. Gandhimathi Ammal expired, on 17/06/1981. During the life time of Gandhimathi Ammal, Vaikundaramasamy Pillai married one Rajammal @ Vellammal, in 1945. Through that marriage, the plaintiffs born. Vaikundaramasamy Pillai expired, on 30/10/1977 leaving behind the plaintiffs as legal heirs. He died intestate. Rajammal @ Vellammal expired, on 08/03/1980. Vaikundaramasamy Pillai executed a settlement deed, on 26/12/1952 in favour of Rajammal @ Vellammal. So the plaintiffs are the legal heirs of the Vaikundaramasamy Pillai.

6.The third defendant has stated that he is also one of the legal heirs, impleaded as party defendant. Now the third defendant has stated in the written statement that the first marriage with Gandhimathi Ammal is not disputed. But the second marriage with Rajammal @ Vellammal is disputed. Similarly, settlement deed is also



C.R.P.(MD)No.88 of 2024

WEB COPY

disputed. Vaikundaramasamy Pillai during his life time settled the right of the temple in favour of Gandhimathi Ammal, on 06/07/1963. After the death of Vaikundaramasamy Pillai, the third defendant was adopted by Gandhimathi Ammal through deed, dated 13/11/1978. Gandhimathi Ammal in turn executed a Will in favour of him, on 05/07/1979 and that was the pleadings by the parties before the trial court. After that, the present petition is taken out by the petitioners seeking amendment of the original plaint incorporating the particulars controverted, denied or disputed facts mentioned by the third defendant in the written statement.

7. That came to be dismissed by the trial court stating that even at the time of filing IA No.3 of 2021, the facts now narrated in the amended petition was already known to him. Even in IA No.4 of 2021, those facts were omitted to be mentioned. So the delay is not properly explained by the petitioners. Apart from that, it is also stated the entire nature of the suit is also sought to be modified or altered. Already, there is a direction by this court to dispose the suit within a stipulated time.



C.R.P.(MD)No.88 of 2024

WEB COPY

8.The learned counsel appearing for the petitioners would rely upon the judgment of the Hon'ble Supreme Court reported in *Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited and another* (2022 LiveLaw (SC) 729) and *S.Venkatram Reddy Vs. S.Vinod Reddy* (CDJ 1986 APHC 160).

9.The learned counsel appearing for the 3rd respondent relied upon the judgments (i)*V.Sridhar Vs. V.Srinivasan* [2009(1) CTC 516]; and *Asian Hotels (North) Ltd., Vs. Alok Kumar Lodha and others* [2022 LiveLaw (SC) 565].

10.Now we will straightaway go to the judgment of the Hon'ble Supreme Court cited by the petitioners reported in ***Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited and another*** [2022 LiveLaw (SC) 729] and the judgment in ***Asian Hotels (North) Ltd., Vs. Alok Kumar Lodha & others*** [2022 LiveLaw (SC) 585] cited by the 3rd respondent.

11.In the former judgment namely ***Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited and another*** [2022 LiveLaw (SC) 729], elaborate guidelines have been given, which reads as under:-



WEB COPY



C.R.P.(MD)No.88 of 2024

"70. Our final conclusions may be summed up thus:

(i) Order II Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview. The plea of amendment being barred under Order II Rule 2 CPC is, thus, misconceived and hence negatived.

(ii) All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word "shall", in the latter part of Order VI Rule 17 of the CPC.

(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



WEB COPY



C.R.P.(MD)No.88 of 2024

(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).

(iv) A prayer for amendment is generally required to be allowed unless
21

(i) by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration,

(ii) the amendment changes the nature of the suit,

(iii) the prayer for amendment is



WEB COPY



C.R.P.(MD)No.88 of 2024

malafide, or

(iv) by the amendment, the other side loses a valid defence.

(v) In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.

(vi) Where the amendment would enable the court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.

(vii) Where the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation.

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



WEB COPY



C.R.P.(MD)No.88 of 2024

(ix) Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.

(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.

(xi) Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the



WEB COPY



C.R.P.(MD)No.88 of 2024

amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed. (See Vijay Gupta v. Gagninder Kr. Gandhi & Ors., 2022 SCC OnLine Del 1897)."

12.Per contra, the learned counsel appearing for the 3rd respondent would submit that if the amendment sought for by the petitioners is permitted, then it will amount to change the nature of the suit. So that should not be permitted.

13.Now the broad principles in the cse of Amendment of Pleadings is now well settled.



C.R.P.(MD)No.88 of 2024

WEB COPY

14. So the question, which arises for consideration is whether the petition is fit into any of the categories mentioned by the Hon'ble Supreme Court.

15. Even though, it has been stated by the petitioners that the trial court has not convinced, but the fact remains that even at the time of filing IA No.4 of 2021, those facts were well within the knowledge of the petitioners. Apart from that, omission is not satisfactorily explained by them. The parties cannot be permitted to file piecemeal pleadings seeking amendment frequently. If such sort of petitions are allowed, then there will be no end to the litigation. More-over, as pointed out by the trial court, there is already a direction issued by this court in CRP(MD)No.1868 of 2021 to dispose of the suit within a period of 12 months. That also could not be complied by the trial court, because of this petition.

16. More-over, after filing the written statement by the third defendant, now the plaintiffs wants to amend the plaint completely changing the nature of the suit. As mentioned by the respondents as well as the trial court, the plaintiffs wants to change the nature of the suit from one of declaration of legal heir ship of the



C.R.P.(MD)No.88 of 2024

WEB COPY

deceased, who are the deceased persons to that of the declaration of right, etc. So, this itself will amount to change or altering the nature of the suit, which is not at all permissible.

17.Now we will straightaway go the power of the parties to file additional pleadings, after the plaint is amended.

18.Order 8 Rule 9 reads as follows:-

"9.Subsequent pleadings.-No pleading subsequent to the written statement of a defendant other than by way of defence to set-off or counter-claim shall be presented except, by the leave of the Court and upon such terms as the Court thinks fit; but the Court may at any time require a written statement or additional written statement from any of the parties and fix a time of not more than thirty days for presenting the same."

19.So the petitioners ought to have filed the reply stating controverting the facts mentioned by the third defendant in the written statement with the leave of this court. Without resorting such provision, they cannot now directly file the petition to amend the plaint. But not



C.R.P.(MD)No.88 of 2024

only the controverting facts mentioned by the third defendant, but changing the entire cause of action for the suit, relief portion, etc.

WEB COPY

20.In view of the settled position of law, any attempt on the part of the plaintiffs to change the nature of the suit cannot be permitted. So on that account, the order passed by the trial court requires no interference. But however, liberty is granted to the petitioners to file the reply statement controverting the facts mentioned by the third defendant.

21.In the result, this civil revision petition is **dismissed**. But however, liberty is granted to the petitioners to file the reply statement before the trial court within a period one week from the date of receipt of a copy of this order. On such filing, the trial court is directed to receive the same and proceed in accordance with law. No costs. Consequently, connected Miscellaneous Petition is closed.

21/02/2024

Index:Yes/No
Internet:Yes/No
er



C.R.P.(MD)No.88 of 2024

To,

The District Munsif Court,
Srivaikundam.



WEB COPY



C.R.P.(MD)No.88 of 2024

G.ILANGOVAN, J

er

C.R.P (MD) No. 88 of 2024

21/02/2024