



C.R.P.(MD)No.1421 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 05.09.2024

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P.(MD)No.1421 of 2022

and

C.M.P.(MD)No.5913 of 2022

Dhinakaran (died)

1.Backiyalakshmi

2.Premapriya

3.Akila Sivaranjani

... Petitioners / Petitioners 2 to 4 /

Plaintiffs 2 to 4

Vs.

1.Kathiriyal

2.Sekar

Thireshu (died)

3.A.Raj

4.Daisy

5.Praveen

6.Arulanandham

7.Visuvasanavaraj

8.Sagayaselvi

... Respondents / Respondents / Defendants



C.R.P.(MD)No.1421 of 2022

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for the records and set aside the Fair and Decreetal Order dated 25.04.2022 in I.A.No.6 of 2021 in O.S.No.365 of 2010 on the file of the District Munsif Court, Aruppukottai and allow the civil revision petition.

For Petitioners : Mr.S.Selva Aditya
for Mr.G.Prabhu Rajadurai

For Respondents : Mr.S.Bala Karthick
for R1 to R3 & R6
: no appearance for R4, R7 & R8
Tapal returned - R5

ORDER

The plaintiffs in O.S.No.365 of 2010 on the file of the Additional District Munsif Court, Aruppukkottai are the revision petitioners herein. They filed I.A.No.6 of 2021 under Order 6 Rule 17 of C.P.C for amending the plaint. Since the case was posted for arguments, I.A.No.5 of 2021 was filed for reopening the suit. Both IAs were dismissed. Challenging the same, the civil revision petition has been filed.

2. The suit was filed by Dhinakaran for declaration and permanent injunction. He passed away during the pendency of the suit. His wife and daughters have come on record. There is a considerable merit in the contention



C.R.P.(MD)No.1421 of 2022

advanced by the learned counsel appearing for the respondents that filing of I.A is highly belated. I will not fault the court below for having dismissed IAs.

The suit was filed in the year 2010. Already, an amendment petition was filed and allowed. The amendment now sought could have been included in the earlier amendment petition. As a result of the conduct of the plaintiffs, the court's time is being unnecessarily consumed.

3. The learned counsel appearing for the revision petitioners draws my attention to the decision reported in **2022 Live Law (SC) 729 (Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited)**. Paragraph No. 70 of the said Judgment reads as follows:-

“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 negated.

(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

(ii) to avoid multiplicity of proceedings, provided

(a) the amendment does not result in injustice to the other side,



C.R.P.(MD)No.1421 of 2022

(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

(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 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.

(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.



C.R.P.(MD)No.1421 of 2022

(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 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)”

4. The case on hand is one for declaration. The petitioners want to rely on certain registered documents in respect of their claim of title over the second item of the suit schedule property. If the amendment is disallowed, certainly they will not be able to prove their case on the second item. Taking into account the overall facts and circumstances, I am inclined to grant one more opportunity to the revision petitioners herein.

5. In this view of the matter, the impugned order is set aside. The defendants are granted opportunity to file additional written statement. Since the defendants are being put to expense on account of the conduct of the plaintiffs, the plaintiffs are directed to pay a sum of Rs.10,000/- as costs to the defendants. The cost of Rs.10,000/- to the defendants shall be paid within two weeks from the date of receipt of a copy of this order. If the revision petitioners



C.R.P.(MD)No.1421 of 2022

fail to remit the cost, the benefit arising under this order would stand automatically vacated. The learned trial munsif is directed to dispose of the suit within a period of six months from the date of receipt of a copy of this order. This Civil Revision Petition is allowed on these terms. No costs. Consequently, connected miscellaneous petition is closed.

05.09.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To:

The District Munsif Court, Aruppukottai.



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C.R.P.(MD)No.1421 of 2022

G.R.SWAMINATHAN, J.

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C.R.P.(MD)No.1421 of 2022

05.09.2024