



C.R.P(MD)No.1058 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.02.2024

CORAM

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

C.R.P(MD)No.1058 of 2020

1.Sekar

2.Selvam

3.Subbaiya

4.Thenuchamy

5.Sundaram

... Petitioners/Petitioners/
Plaintiffs

Vs.

Pandi

... Respondent/Respondent/
Defendant

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, to call for the records in respect of fair and decreetal order, dated 10.02.2020 passed in I.A.No.364 of 2019 in O.S.No.423 of 2014 on the file of the District Munsif cum Judicial Magistrate, Peraiyur and set aside the same.

For Petitioners : Mr.M.Gnanagurunathan

For Respondent : Mr.J.Jeyakumaran



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ORDER

The petitioners herein originally filed O.S.No.423 of 2014 for permanent injunction against the sole defendant in respect of the suit schedule property. Subsequently, the petitioners amended the plaint by filing an application under Order 6, Rule 17 of CPC in I.A.No.372 of 2018, thereby amending the plaint claiming title over the suit property under a registered sale deed, dated 24.01.1972. By which time, the respondent herein, who is the defendant in the suit has already filed a written statement and additional written statement contending that his father has purchased a suit property under a registered sale deed, dated 29.01.1972 and claiming title over the suit property. However, the petitioners herein have not taken immediate steps for amendment of the prayer in the suit appropriately. Thereafter, the trial in the suit commenced by filing chief affidavit of P.W.1 (i.e.,) one of the plaintiffs. But for want of appearance of the P.W.1, the suit was dismissed for default on 27.03.2017. The same was restored on 09.08.2017 and again, the same was dismissed on 22.09.2017. However, the learned Trial Court was kind enough to restore the suit once again by an order, dated 28.06.2018. At that stage, the petitioners herein filed



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I.A.No.364 of 2019 seeking amendment of the prayer in the suit by including a prayer for declaration of title over the suit schedule property.

2. The learned Trial Court having taken note of the over all conduct of the plaintiffs in prosecuting the suit and also the fact that the suit was dismissed for default on two occasions and also the fact that the petitioners have already filed an application under Order 6, Rule 17 of CPC as early as in the year 2018. But consciously they have not chosen to seek amendment of the prayer refused to entertain the application filed by the petitioners on the ground that, the said application was filed belatedly and also on the ground that they have not sought for such amendment prayer in I.A.No.372 of 2018 filed by them.

3. This Court does not find any error or illegality on the face of the order passed by the learned Trial Court. However, it is settled law that the amendments to the pleadings are to be permitted liberally to see that the actual controversy between the parties is resolved once for all and also to avoid multiplicity of litigation. In the instant case, though the suit was filed initially for permanent injunction, taking into consideration, the rival title set up by the defendants, the petitioners have filed I.A.No.364 of 2019 seeking amendment



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of the prayer to that of to declare the sale deed, dated 29.01.1972 relied upon by the respondent as null and void. No doubt the respondent has claimed title over the property as early as in the year 2016 and thereafter, the petitioner herein filed an application under Order 6, Rule 17 of CPC. But has not chosen to seek amendment of the prayer as sought for now.

4. But the fact remains that the petitioners herein and respondent are claiming title over the suit schedule property by placing reliance on different registered sale deeds. Whatever be the result of the present suit in the present form, the same would not put an end to the litigation between the parties and ultimately incase if the petitioner loose his suit, he may have to initiate fresh suit seeking to set aside the sale deed, dated 29.01.1972 set up by the respondent herein. Even otherwise, if the suit is decreed also in favour of the petitioners herein, the respondent may have to initiate appropriate steps by filing a comprehensive suit for declaration of title or otherwise. As all the parties are before the Court, if the issue is resolved once for all, there would be a quietus to litigation between the parties. The actual purpose of Order 6, Rule 17 of CPC is only that as repeatedly held by the Hon'ble Apex Court as well as this Court.



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5. In the case of ***Surender Kumar Sharma Vs. Makhan Singh reported in 2009 AIR SCW 6131***, the Hon'ble Apex Court held as under:

"7. As noted hereinafter, the prayer for amendment was refused by the High Court on two grounds. So far as the first ground is concerned i.e. the prayer for amendment was a belated one, we are of the view that even if it was belated, then also, the question that needs to be decided is to see whether by allowing the amendment, the real controversy between the parties may be resolved. It is well settled that under Order 6, Rule 17 of the Code of Civil Procedure, wide powers and unfettered discretion have been conferred on the Court to allow amendment of the pleadings to a party in such a manner and on such terms as it appears to the Court just and proper. Even if, such an application for amendment of the plaint was filed belatedly, such belated amendment cannot be refused if it is found that for deciding the real controversy between the parties, it can be allowed on payment of costs. Therefore, in our view, mere delay and laches in making the application for amendment cannot be a ground to refuse amendment. It is also well settled that even if the amendment prayed for is belated, while considering such belated amendment, the Court must bear in favour of doing full and complete justice in the case where the party against whom the



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amendment is to be allowed, can be compensated by cost or otherwise."

6. Similar view is also taken by the Hon'ble Apex Court in the case of ***Revajeetu Builders and Developers Vs. Narayanaswamy and Sons and Others reported in 2009 (10) SCC 84***, wherein, the Hon'ble Apex Court after reviewing the entire case law, laid down the factors to be taken into consideration while dealing with the applications for amendments under Order 6, Rule 17 of CPC and held as under:

"63. On critically analysing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment:

(1) whether the amendment sought is imperative for purpose and effective adjudication of the case;

(2) whether the application for amendment is bona fide or mala fide;

(3) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(4) refusing amendment would in fact lead to injustice or lead to multiple litigation;



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(5) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and

(6) as a general rule, the Court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

These are some of the important factors which may be kept in mind while dealing with application filed under Order 6, Rule 17. These are only illustrative and not exhaustive."

7. In the light of the settled legal position as laid down by the Hon'ble Apex Court, would apply to the facts of the case on hand. In order to resolve the real controversy between the parties, it would be in the interest of justice to allow the amendment as sought for by the petitioners herein. Accordingly, the order under revision is set aside and consequently I.A.No.364 of 2019 is allowed permitting amendment as prayed for. However subject to costs of Rs.5,000/- payable to the respondent within two (2) weeks from today.

8. Considering the fact that the suit is of the year 2015 and almost a decade have already elapsed, this Court is of the considered view that it is appropriate to direct the learned Trial Court to dispose of the suit as



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expeditiously as possible preferably on day today basis and dispose of the same

as expeditiously as possible at any rate on or before **30.06.2024**.

9. This Civil Revision Petition stands allowed, accordingly.

29.02.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

To

1.The District Munsif cum Judicial Magistrate,
Peraiyur.

2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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MUMMINENI SUDHEER KUMAR, J.

BTR

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