

C.R.P(MD).No.1323 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 23.02.2024

CORAM:

THE HON'BLE Mr. JUSTICE K.K.RAMAKRISHNAN

C.R.P.(MD).No.1323 of 2014

and

M.P.(MD).No.1 of 2014

1.Bala Sayee Kumar

2.Venkataraman

3.Muthukrishnan

4.Rajasekaran

5.Balakrishnan

... Petitioners

Vs.

Madasamy(Died)

2.Anburaj

3.Pattabi Srinivasan

4.Balakrishnan

5.Bala Venkatesan

6.Balasubramanian

7.Subbulakshmi

8.Bala Nagalakshmi

9.Ravichandran

10.Elangovan

11.Kamaraj

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12.Kumar

13.Latcham

14.Santhi

15.Nirmala

... Respondents

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the order dated 20.03.2014 made in I.A.No.601 of 2012 in O.S.No.201 of 2011 on the file of the District Munsif Court, Nilakottai.

For Petitioners : Mr.D.Senthil
For M/S.V.Nagarajan

For Respondents : Mr.J.Barathan for R2, R10 and R11
: Mr.A.Pushpanathan for R3 and R9

ORDER

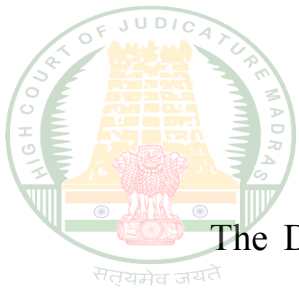
The plaintiffs in O.S.No.201 of 2011 on the file of the District Munsif Court, Nilakottai, are the revision petitioners. They have filed this revision petition to set-aside the fair and decreetal order of the Learned District Munsif, Nilakottai passed in I.A.No.601 of 2012 in O.S.No.201 of 2011, dated 20.03.2014, where there his prayer to make amendment under Order 6 Rule 17 and Rule 151 of C.P.C., has been rejected.



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WEB COPY 2.For sake of the convenience and clarity of facts, the parties shall be referred to as per their status/ position in the suit.

3.The plaintiffs in O.S.No.201 of 2011 are petitioners herein and they have filed the said suit against the Defendants No.1 to 9. According to the plaintiffs, the suit scheduled property originally belonged to one Ondiyal @ Veerappan Servai. After his demise, his legal heirs Natarayan Servai, Mahamuni and Ondiyal @ Veerappan Servai inherited the property and were enjoying the property. Their legal heirs sold the properties to Karia Goundar by sale deed 26.08.1988. The said Karia Goundar has enjoyed the said properties along with his other properties. The said Karia Goundar and his son sold the said purchased property and other properties to the plaintiffs vide sale deed dated 17.04.2000 including the suit schedule properties. The 2nd Defendant son of the 1st Defendant and 2nd Defendant the made application to the Revenue Divisional Officer, Dindigul to give Patta and the Revenue Divisional Officer, Dindigul by order dated 28.02.2011 without considering the plea of the plaintiffs has passed order against the plaintiffs and hence he preferred appeal before the District Revenue Officer.



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The Defendant Nos.1 & 2 are no way connected with the suit scheduled property and made a false claim and they also raised objection to measure the properties on 25.04.2011 and their purchased lands are not relating to the suit scheduled properties and they made false claim and attempted to interfere with plaintiff's peaceful possession and enjoyment of the suit scheduled properties and therefore he filed a suit for declaration and injunction against the Defendant Nos.1 & 2. Further, from the Defendant Nos.3 to 9, the plaintiffs entered with sham and nominal sale deed with Defendant Nos.3 to 9 to make improvement in the said suit scheduled properties and the possession was with the plaintiffs and the Defendant Nos. 3 to 9 have neither title to the suit schedule properties nor in enjoyment of the suit schedule properties. Therefore, they were also made a party to the proceedings and the relief has been claimed against them also.

4.The Defendant Nos.1 has filed Written statement denying the title of the plaintiffs and claimed that original owners of the suit schedule properties are one Periyakaruppa Thevar, Sivangalai Thevar and Naga Thevar. They sold the property to the 1st Defendant's father Ragappa Nadar on 27.07.1972. 1st Defendant is only son of the said Ragappa Nadar. The



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said Ragappa Nadar executed a Will dated 24.04.1981 in favour of her wife Seeniammal and 1st Defendant bequeathing his property including suit scheduled properties. The 1st Defendant is aged person and hence he executed registered a Power of Attorney in favour of her son 2nd Defendant. He found the wrongful entry made in the Revenue Records on the basis of the purchase made by the plaintiff's ancestor and hence made the application before the Revenue Divisional Officer, Dindigul and same has been correctly ordered. Therefore, 1st & 2nd Defendant made the different source of title.

5.After filing the written statement, the plaintiffs have filed I.A.No. 601 of 2012 to make the certain amendment without changing the cause of action under order 6 Rule 17 r/w section 151 of CPC to amend the plaint. The Learned Trial Judge dismissed the application by the impugned order stating that the proposed amendment would not only change the cause of action and also belated one. Challenging the same, plaintiffs filed this revision.



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6.The Learned Counsel for the Petitioners would submit that the proposed amendment would not change the cause of action and pre trial amendment has to be allowed. The plaintiffs already impleaded the Defendants Nos.3 to 9 and there is a specific averment against them in the plaint and the said Defendants have filed written statement disputing the averment made by the plaintiffs and specifically denied the title of the plaintiffs and therefore the petition was filed to make the proposed amendment. Hence, he seeks to allow this revision.

7. During the pendency of this revision petition, the first respondent died and his legal heirs also were brought on record. The contesting respondents though received the notice, have not appeared through the counsel. The Learned Counsel appearing for the Respondents would submit that the Learned Trial Judge correctly dismissed the application holding that the proposed amendment would change the cause of action and he seeks to dismiss the application.

8.This Court considered the rival submissions made by the learned counsel appearing on either side and perused the materials available on



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9.The plaintiffs specifically avered in the plaint that the Defendant Nos.1 & 2 made the claim over the suit scheduled properties and trying to interfere with their peaceful possession and enjoyment of the properties.

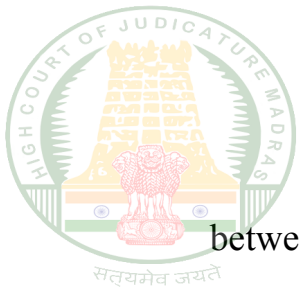
10.The Plaintiffs further specifically stated that they made the sham and nominal sale deed in favour of the Defendant Nos.3 to 9 and hence, plaintiffs at that time of the filing the suit sought the relief that both the plaintiffs and the defendant Nos.3 to 9 are entitled for the relief of declaration and injunction. But, the defendant Nos.3 to 9 have filed the separate written statement denying the plea of sham and nominal transaction. Therefore, the plaintiffs came forward with the amendment to declare the title by deleting the portion of the defendant Nos.3 to 9 in the relevant prayer and paragraph. In the considered opinion of this Court, no change of cause of action would arise and also there is no alteration of the plea of the plaintiffs to claim the absolute title over the suit scheduled property. Since the defendant Nos.1 and 2 disputed the entire title of the plaintiff including the portion of the property said to have been alienated by



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the petitioners in favour of the defendant Nos.3 to 9, the petitioners filed the amendment petition. There was no change of cause of action. The amendment was claimed before commencement of trial without material change of the cause of action.

11.The plaintiffs, namely, the revision petitioners herein have claimed the title over the suit scheduled property. The defendant Nos. 3 to 9 also claimed the title over the portion of the suit scheduled property on the ground that they had purchased the portion of the property from the plaintiffs. The defendant Nos.1 and 2, disputed the very title of the plaintiffs and the defendant Nos.3 to 9. Trial was not commenced. Pre-trial amendment is mater of right provided that the proposed amendment would not change the entire cause of action and nature of the course of proceedings. In this case, the plaintiffs only seek the amendment to mould the relief by substituting the existed prayer. The nature of the amendment in the considered opinion of this Court, would not change the cause of action. Therefore, the learned trial Judge has committed error in rejecting the amendment petition by holding the proposed amendment would change the cause of action. The amendment was filed only to minimize the litigation



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between the parties. Therefore, this Court is inclined to set aside the impugned fair and decreetal order passed by the learned trial Judge. The Hon'ble Supreme Court and this Court reiterated the principle that the pre trial amendment can be allowed and parties cannot be directed to file another set of suit with the same cause of action. It is relevant to refer the following ratio of the Hon'ble Supreme Court in the case of ***Pankaja v. Yellappa*** reported in ***2004 AIR SCW 4522*** and the Hon'ble Full Bench of this Court reported in ***2007 1 MLJ 320***.

11.1. In the case of ***Pankaja v. Yellappa*** reported in ***2004 AIR SCW 4522*** has held as follows:

Para-12: So far as the Court's jurisdiction to allow an amendment of pleadings is concerned, there can be no two opinion that the same is wide enough to permit amendments even in case where there has been substantial delay in filing such amendment applications. This Court in numerous cases has held the dominant purpose of allowing the amendment is to minimize the litigation, therefore, if the facts of the case so permit, it is always open to the Court to allow applications in spite of the delay and laches in moving such amendment application.



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11.2. In the case of ***Hi. Sheet Industries v. Litelon Limited***, reported in ***2006 SCC OnLine Mad 1077*** the Hon'ble Full Bench of this Court has held as follows:

*3) The proviso to Order 6 Rule 17 of Act 22 of 2002 is applicable to the pleadings instituted with effect from 01.07.2002 and not to the pleadings instituted prior to 01.07.2002 and while considering the proviso to Order 6 Rule 17, the Court has to examine in detail and commencement of trial must be understood as final hearing of the suit i.e., examination of witnesses, filing of documents, addressing of arguments etc., and the **Court should not forget its unfettered discretion to allow the amendment after applying itself the judicial discretion, if there is no negligence on the part of the party.***

12. Here the issue is whether the plaintiffs are the owners of the property including the sham and nominal transaction made in favour of the defendant Nos.3 to 9 and whether the case of the defendant Nos.1 and 2 are the owners of the property and whether the defendant Nos.3 to 9 are the bonafide purchasers. All are interrelated and hence, the learned trial Judge ought to have allowed the application. But, the learned trial Judge has erroneously dismissed the application and therefore, this Court in the



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interest of justice and finds no change of cause of action would arise and is inclined to allow the amendment application by setting aside the impugned fair and decreetal order.

13. Accordingly, this civil revision petition is allowed setting aside the the impugned order passed in I.A.No.601 of 2012 in O.S.No.201 of 2011, dated 20.03.2014, by the District Munsif Court, Nilakottai. The respondent Nos.1 and 2 is at liberty to file the written statement, and also it is left open to the petitioners to raise their objections before the trial Court and the same may be considered by the learned trial judge at the time of the trial. Considering the pendency of the suit from 2011, this Court directs the learned District Munsif Court, Nilakottai, to dispose the suit in O.S.No.201 of 2011 within a period of six months from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

23.02.2024

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

1.The District Munsif Court,

Nilakottai.

Copy to

The Section Officer,
VR Section,
Madurai Bench of Madras High Court, Madurai.



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K.K.RAMAKRISHNAN, J.

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