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C.R.P.(MD) Nos.2265 & 2266 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	04.11.2024
Pronounced on	15.11.2024

CORAM

THE HON'BLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

C.R.P.(MD) Nos.2265 & 2266 of 2024

and

C.M.P.(MD) Nos.12813 & 12833 of 2024

1.P.Susila

W/o.Late.Periyakaruppan Servai

2.I.Divya Barathi

D/o.Late.P.Irulappan

... Petitioners in
both C.R.Ps.

Vs.

1.A.Murugayee

W/o.Late.Alagu @ Kuttai Alagu

2.M.Senthil

S/o.Maarnaatan

3.Vidhya

D/o.Late.Alagu

4.Nathiya

D/o.Late.Alagu

... Respondents in
both C.R.Ps.

Common Prayer: Civil Revision Petitions filed under Article 227 of the Constitution of India praying to set aside the fair and decreetal common



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order dated 05.02.2024 passed in I.A.Nos.1 & 2 of 2023 in O.S.No.271 of 2008 on the file of the District Munsif Court, Vadipatti.

For Petitioners
in both C.R.Ps. : Mr.M.Venkatesan

For Respondents
in both C.R.Ps. : Mr.S.Chandrasekaran

COMMON ORDER

Both these Civil Revision Petitions have been filed against the common order dated 05.02.2024 passed by the District Munsif Court, Vadipatti, in I.A.Nos.1 & 2 of 2023 in O.S.No.271 of 2008.

2. The revision petitioners, as plaintiffs, filed the above suit for bare injunction against the respondents/defendants before the Vacation Court, Madurai, and it was numbered as O.S.No.72 of 2007. Thereafter, the suit was transferred to the District Munsif Court, Vadipatti, and re-numbered as O.S.No.271 of 2008. During the pendency of the suit, the revision petitioners/plaintiffs filed I.A.No. 354 of 2009 for amendment of the plaint prayer, by adding the relief of declaration and recovery of possession, which was allowed by the trial court. The said suit was



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thereafter dismissed by the learned District Munsif, Vadipatti, on 01.07.2016, against which, the revision petitioners/plaintiffs have preferred the first appeal in A.S.No.30 of 2017 before the III Additional Subordinate Court, Madurai [hereinafter referred to as 'First Appellate Court'].

3. The First Appellate Court, having found that no issues were framed in respect of declaratory relief and recovery of possession and no findings were given by the trial court in this regard, remanded the case back to the trial court for framing additional issues and permitting the parties to lead evidence. After remand, the revision petitioners/plaintiffs have filed two applications in I.A.Nos.1 & 2 of 2022 in O.S.No.271 of 2018, for amendment of the plaint and for receiving additional document. However, the said applications were dismissed by the trial court, against which, the present Civil Revision Petitions have been filed.

4. Mr.M.Venkatesan, the learned counsel for the revision petitioners/plaintiffs, would submit that after filing the suit, an interim injunction was granted by the trial court; that while the interim injunction was in force, the first respondent's/first defendant's husband illegally



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occupied a portion of the disputed property, and therefore, the amendment petition was filed to amend the plaint; that the revision petitioners/plaintiffs also intended to mark rough sketch of the property as additional evidence in order to have a fair adjudication of the dispute in question; that neither the proposed amendment will create a new cause of action nor will alter or change the character of the suit; that however, the trial court, without considering these aspects, erroneously dismissed the two applications; and, thus, the common impugned order of the trial court passed in I.A.Nos.1 & 2 of 2023 requires interference.

5. On the other hand, Mr.S.Chandrasekaran, the learned counsel for the respondents/defendants, would submit that the proposed amendment, after the remand of the suit by the First Appellate Court, is beyond the scope of the remand; that the rough sketch was prepared only to mislead the court, which is contrary to the actual facts, and therefore, the same cannot be received as additional evidence; that the revision petitioners/plaintiffs have suppressed the material fact that an advocate commissioner was appointed in I.A.No.310 of 2008, who inspected the suit property and filed a detailed report along with a rough sketch, which reveals that there was no encroachment by the defendants on the disputed



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property; that the proposed amendment cannot be permitted on the grounds that the alleged trespass into the first item of the suit property and the alleged encroachment are nothing but false statements; that the proposed amendment is highly fictitious, and if it is permitted, it would change the entire nature and character of the suit, which is prohibited by law; and that, therefore, the trial court has rightly dismissed the said applications, which calls for no interference.

6. Heard on both sides. Records perused.

7. The undisputed facts of the present case are as follows:

- (a) Originally, the suit was filed for the relief of bare injunction against the defendants.
- (b) Thereafter, the prayer of the suit was amended by adding the following prayer *vide* order dated 31.03.2009 passed in I.A.No.354 of 2009:

“to declare that the plaint schedule mentioned house sites absolutely belongs to the plaintiffs alone and for recovery of possession from the defendants to the extent of east-west 9 feet on the north and the southern side and to an extent of north-south 19 feet both on the west and eastern side to the very eastern side of the 1st item of the plaint schedule mentioned house site in the original plaint.



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- (c) The suit was dismissed by the trial court on 01.07.2016.
- (d) Appeal Suit was filed in A.S.No.30 of 2017 by the revision petitioners/plaintiffs.
- (e) The First Appellate Court has set aside the order of the trial court dated 01.07.2016 and remanded the case back to the trial court for framing additional issues and to permit the parties to lead additional evidence by its order dated 16.09.2022.
- (f) After remand, the revision petitioners/plaintiffs have filed two Interlocutory Applications in I.A.Nos.1 & 2 of 2022 in the above suit in O.S.No.271 of 2018 for amendment and for receiving additional evidence.
- (g) The trial court has dismissed the above applications, stating that the suit had been remanded for the purpose of framing additional issues and allowing the parties to produce further evidence in this regard, and therefore, the requests for further amendments to the plaint and the acceptance of additional evidence were found to exceed the scope of the remand order.
- (h) Aggrieved by this, the present Civil Revision Petitions have been filed.

8. The question that arises for consideration in the present Civil Revision Petitions is whether the proposed amendment can be permitted



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and the proposed document can be received as additional evidence, even in the remand proceedings.

9. The main provision under Order VI Rule 17 of CPC would state that the Court, at any stage of the proceedings, may entertain the application seeking amendment of the pleadings, if the Court finds that those amendments are very much necessary for the purpose of determining the real issues in controversy between the parties. The proviso found under Order VI Rule 17 of CPC would read that such an application seeking amendment shall not be entertained after the trial has commenced. There is also a rider thereunder that if the court comes to the conclusion that the party, in spite of due diligence, could not come out with such a petition seeking amendment prior to the commencement of trial, such an application for amendment can be entertained by the Court.

10. The Hon'ble Supreme Court, in the judgment in ***Rajkumar Guruwara (Dead) through LRs. v. S.K.Sarwagi & Co. Pvt. Ltd. and another***, reported in **2008 (5) CTC 253**, has held that after commencement of trial, the question of prejudice to the opposite party may arise, and in such event, it is incumbent on the part of the Court to satisfy conditions



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prescribed in proviso to Rule 17 and the pre-trial amendments are to be allowed liberally than those that are sought to be made after the commencement of trial.

11. This Court, in the judgment in **D.Ramanujam** v. **R.Panneerselvam**, reported in **2006 (3) CTC 27**, has held that “*when the trial has already commenced, the present amendment petition was filed without giving any valid reason for not filing the amendment before the commencement of the trial. Even after the trial, the Court could not allow the Amendment petition unless the Court is satisfied that inspite of the due diligence, the party could not have raised the matter. In this case, the lower Court correctly applied the proviso and came to a correct conclusion that the plaintiff had not stated any reason in the Amendment petition for belated filing.*”

12. Firstly, the party, who comes forward with a petition seeking amendment of the pleading, is bound to give valid reasons for not filing the amendment petition before the commencement of the trial. The Court also will have to address the point as to whether the party could have filed the petition seeking amendment, had the party taken due diligence while



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dealing with the amendment petition filed after the commencement of the trial. In short, the proviso under Order VI Rule 17 of CPC will have to be strictly adhered to, as otherwise, the proviso found under the aforesaid provision of law will have no meaning at all.

13. It is equally true that the court has ample power to entertain a petition seeking amendment, if it comes to a conclusion that the amendment is necessary to decide the real disputes that arise between the parties. But, such a power given to the Court is circumscribed by the proviso found under the aforesaid provision of law. The embargo found under the proviso limits the large power found in the main proviso under Order VI Rule 17 of CPC. Unless the Court records the existence of the contingency provided under the proviso under Order 6 Rule 17 of CPC, the petition for amendment after the commencement of the trial cannot be entertained.

14. Coming to the facts and circumstances of this case, in the supporting affidavit, it has been stated that the suit was filed in the year 2007 and numbered as O.S.No.72 of 2007 before the Vacation Court, Madurai, which was later transferred to the trial court and re-numbered as



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O.S.No.271 of 2008. Thereafter, the husband of the first respondent/first defendant, while the interim injunction was in force, illegally trespassed into the first item of the suit property and occupied the same. Since the trial court dismissed the suit, the revision petitioners/plaintiffs filed first appeal in A.S.No.30 of 2017, in which, the III Additional Subordinate Judge remanded the matter back to the trial court, by its order dated 16.09.2022 for framing additional issues and for permitting the parties to lead the evidence. At this juncture, the revision petitioners/plaintiffs filed the two applications to amend the plaint and also receive the rough sketch as additional evidence, which were dismissed by the impugned common order.

15. It is not in dispute that the amendment petition and the petition for receiving documents were filed after the case was remanded by the First Appellate Court. There can be no doubt with regard to the settled position that the court, to which the case is remanded, has to comply with the order of remand, and that acting contrary to the order of remand is contrary to the law. In other words, the order of remand shall be followed in its exclusive spirit.



WEB COPY 16. The amendments sought for by the revision petitioners/plaintiffs

are extracted hereunder:

1. In the body of plaint, after paragraph No: 9, add the following as paragraphs No: 9(a) and 9(b)

"9(a) After filing of the present suit, the defendants demolished the rented house, wherein they were residing, adjoining the 1st item of the suit property and all on a sudden put up a tiled shed erecting stone pillar in that site and also encroaching upon the 1st item of the suit property on the south-eastern side to an extent of East-West 9 Ft. and North-South 19 Ft. Since there was no surrounding wall, the defendants never resided in the above tiled house.

9(b) Hence, the suit is filed for the relief of declaration to declare that the plaintiffs alone are the absolute owners of the suit scheduled mentioned properties and consequentially for recovery of the possession of the portion encroached by the defendant to an extent of East-West 9 Ft. and North-South 19 Ft. on the south-eastern side of the 1st item of the suit property from the defendants. Herewith a rough sketch showing the suit property and the portion encroached upon the 1st item of the suit property by the defendants is filed. The rough sketch may be treated as the part and parcel of the plaint.

2. In 2nd line of the para 10 of the plaint, after the words 'trespassed into the' add the following:



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'remaining portion of the'

3. In line 6 of the para 10 of the plaint, before the word 'plaint schedule', add the following:

'remaining portion of the'

4. In para 11, after the word 'section' add '25(a)'

5. In para 12, after the word 'to trespass into the suit property' add the following:

'during the last week of July 2007, when the defendants encroached upon the eastern side of the 1st item of the suit property'

6. In the penultimate line of the paragraph (a) of the prayer column in the amended plaint, insert the words 'as depicted in the rough sketch' after the words '1st item of the suit property'.

7. In the penultimate line of the paragraph (b) of the prayer column in the amended plaint, insert the words 'remaining portions of the' after the words 'enjoyment over the'.

8. Add the following as the last line in the 1st item of the Schedule of Property, 'out of this east-west 9 Ft. north-south 19 Ft. is encroached by the defendants. It is clearly shown in the rough sketch'.

17. On fact, it is seen that the revision petitioners/plaintiffs proposed to amend the plaint on the grounds hereunder:



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- i. The amendment is with regard to the facts already narrated in the plaint as an additional approach, which is also within the scope of a remand order;
- ii. The First Appellate Court remanded the case back to the trial court for framing additional issues and for permitting the parties to lead the evidence on the question of declaration of title and recovery of possession; and
- iii. The proposed amendment is also connected with the above issues, and therefore, the proposed amendment does not introduce a new case or a new cause of action and is only based on the same cause of action.

18. Since the necessary facts are already set out in the plaint, the addition of further facts related to the same cause of action, by way of amendment, would not result in the introduction of a new cause of action. It is true that the revision petitioners/plaintiffs have not set out the details of the facts, but this does not preclude the revision petitioners/plaintiffs from seeking an amendment to add additional facts to the plaint. Unless the additional facts introduce a new case or cause of action, the same cannot be permitted. Moreover, the amendment sought for is necessary for a decision of the real dispute between the parties which is, what are their



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rights in the suit property. That dispute was clearly involved in the plaint as originally framed. All the necessary basic facts have been stated.

19. Therefore, even after remand, the amendment of the plaint can be allowed for the purpose of determining the real controversy between the parties and avoiding multiplicity of the proceedings and ensuring that substantive justice is done. There is nothing on record to show that the said amendment would alter the original cause of action and introduce a new case. Furthermore, by marking the rough sketch, no prejudice will be caused to the other side. On the other hand, it would assist the Court to determine the issue in question. In fact, the remand order also indicates the same. The First Appellate Court has remanded back the matter to the trial court on the premise that no findings were rendered by the trial court with regard to other reliefs claimed in the plaint i.e., declaratory relief and recovery of possession. Hence, the First Appellate Court has directed the trial court to frame additional issues and permit the parties to lead evidence. Necessarily, to establish the rights of the revision petitioners/plaintiffs, the revision petitioners/plaintiffs have to lead evidence. Hence, receiving the rough sketch is only within the scope of remand. Therefore, the proposed amendment and receiving the additional



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evidence will only serve ultimate justice. Moreover, the respondents/defendants have an opportunity to cross-examine the witness with regard to the truthness of the amended pleadings and to test the veracity of the proposed documents. Whether the said document can be relied or not, the trial court is at liberty to determine the same while deciding the case.

20. In the light of the facts and circumstances of the case on hand, I am of the view that the impugned common order dated 05.02.2024 in I.A.Nos.1 & 2 of 2023 in O.S.No.271 of 2008 warrants interference of this Court. Therefore, the impugned common order dated 05.02.2024 is liable to be set aside and is accordingly set aside.

21. The revision petitioners/plaintiffs are directed to carry out the necessary amendments in the plaint, within a period of two weeks from the date of receipt of a copy of this order.

22. The trial court, i.e., the District Munsif Court, Vadipatti, is directed to permit the revision petitioners/plaintiffs to carry out the amendments in the plaint and receive the additional document, and



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dispose the suit on its own merits, untrammelled by any of the observations made by this Court in this order.

23. In the result, this Civil Revision Petitions are allowed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

15.11.2024

Index: Yes/ No
Neutral Citation: Yes / No
Speaking Order/Non-Speaking Order

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The District Munsif,
Vadipatti,
Madurai District.



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K.GOVINDARAJAN THILAKAVADI, J.

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Pre-Delivery Common Order made
in
C.R.P.(MD) Nos.2265 & 2266 of 2024
and
C.M.P.(MD) Nos.12813 & 12833 of 2024

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