



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : **30.10.2024**Delivered on : **24.01.2025**

CORAM

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA**C.R.P.No.316 of 2023****and****C.M.P.No.2670 of 2023**

Senkuttuvan

Petitioner

Vs.

Kirubanandham

Respondent

PRAYER: Civil Revision Petition filed under Section 227 of the Constitution of India seeking to set aside the fair order and decretal order dated 23.11.2022 in I.A.No.1 of 2021 in A.S.No.13 of 2018 on the file of the Principal District Judge, Ariyalur.

For Appellant: Ms.K.Abirami

For Respondent: Mr.P.Mani for Mr.R.Arunmozhi

ORDER

An order passed by the Appellate Court viz., Principal District Judge, Ariyalur dated 23.11.2022 in I.A.No.1 of 2021 in A.S.No.13 of 2018 allowing the amendment sought for by the plaintiff has been put to challenge in the present civil revision petition by the defendant.

2. Brief facts of the case are as under:-

i) The petitioner herein had filed a suit in O.S.No.10 of 2010 on the file of

the learned Sub Judge, Ariyalur seeking for a declaration and permanent



injunction in respect of the suit property describing the same as one falling under Survey No.182/25.

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ii) The suit was contested by the respondent herein and after a full-fledged trial, the Trial Court had dismissed the suit, against which, the petitioner herein had filed an Appeal Suit in A.S.No.13 of 2018.

iii) Pending the Appeal Suit, the petitioner had filed an Application in I.A.No.1 of 2021 under Order VI Rule 17 and 18 and Section 151 CPC seeking to amend the plaint and to furnish the survey number with its sub-division as 182/25B contending that he was not aware of the sub-division at the time of filing the suit.

iv) The amendment application was objected by the respondent herein by filing counter contending that the plaintiff/petitioner was put to knowledge about the sub-division by filing written statement and also putting suggestions to him when he was cross examined, however, the plaintiff/petitioner, who failed to initiate for amending the survey number before the Trial Court, after having suffered an order of dismissal of the suit, has come up with an application belatedly seeking the amendment to nullify the order passed by the Trial Court and the same is barred by limitation too.

v) Whiles, the Appellate Court had allowed the application filed by the plaintiff/petitioner finding that the amendment is necessary for proper adjudication and by the said amendment, the defendant would not be prejudiced. Challenging the said order, the present civil revision petition has been filed.



3. Submissions of the learned counsel for the petitioner are as under:-

i) The amendment application filed by the plaintiff at the appellate stage is a belated one and not permissible after the trial begins as per Order VI Rule 17 of the Civil Procedure Code as amended in 2002.

ii) Article 58 of the Limitation Act, 1963 mandates that any amendment should have been made within 3 years when the right to sue first accrues and thereby, the suit, having been filed in the year 2010, the amendment application filed in the year 2021 is hopelessly barred by limitation.

iii) The appellate court has failed to appreciate or examine the documents containing the sub-division details viz., Ex.B2 information obtained under RTI Act, Ex.B3, complaint filed by the plaintiff as against the defendant and others before the Magistrate Court under Section 156(3) Cr.P.C. and Ex.B18, copy of FIR, when especially, the plaintiff had admitted his signature found in the document obtained by him under the RTI Act, 2005, but, has denied the same in the private complaint before the Judicial Magistrate under Section 156(3) of Cr.P.C. and also denied the registration of the FIR, which establishes that the plaintiff was well aware about the sub-division during the pendency of the suit itself.

iv) The appellant was well aware of the sub-division during the pendency of the suit, however, he had not initiated for amending the survey number in the plaint and had filed the amendment application only to deny the fruits of the order to the defendant, however, the Trial Court erred in allowing the application and thereby, it is liable to be set aside.



4. The decisions relied on by the learned counsel for the petitioner are as under:-

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i) **Rajkumar Gurawara vs. S.K.Saragi & Co.** (2008) 14 SCC 364 -

Amendment sought by the plaintiff after commencement of trial, during the stage of argument was rejected on the ground that the appellant had not proved that even after due diligence, he had failed to introduce the amendment at the pre-trial stage.

ii) **Anthonyamy vs. Christoraj and another** (2013) SCC OnLine Mad.

1172 - An amendment admitting to wipe out the pleadings and admissions of the party, already considered by the Trial Court, for the purpose of arriving at a decision, in the Suit, cannot be allowed to be substituted with a new case, at the appellate stage, which would certainly cause serious prejudice to the party, against whom the amendment is sought for. The effect of an admission in earlier pleading shall not be permitted to be taken away, by any proposed amendment.

iii) **Minor Balakrishnan through his Natural Guardian, next friend and father, Gnanasoundiran vs. Gunasekaran** (2012) SCC OnLine Mad.

1960 - Amendment sought for in a suit for declaration to include the prayer for recovery of possession, after having taken a contradictory stand with regard to possession, was declined.

iv) **Basavaraj vs. Indira** (2024) 3 SCC 705 - Amendment, which would change the nature of suit and thereby giving rise to a fresh cause of action, cannot be allowed ignoring the concept of limitation. In other words, what



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5. Learned counsel appearing for the respondent herein/plaintiff would submit that though the survey number was furnished in the plaint without subdivision details, the boundaries and extent of the suit property have not been denied by the defendant and moreover, due to the amendment allowed by the appellate court, the nature of the suit does not change as no new cause of action has been sought to be included and thereby no prejudice would be caused to the defendant by the amendment of survey number, but, if the amendment is not allowed, it would cause great hardship to the plaintiff and the appellate court, having appreciated the same in proper perspective, has allowed the amendment, which does not warrant any interference and the civil revision petition may be dismissed.

6. Heard the learned counsel appearing for the parties and perused the materials available on record.

7. What is to be determined is whether the appellate court is right in allowing the application filed by the plaintiff seeking amendment of the plaint in respect of survey number alone.

8. The application filed by the plaintiff is one under Order VI Rule 17 CPC. The said provision reads as under:-

"17. Amendment of pleadings.-The Court may at any stage of the proceedings allow either party to alter or amend his



pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial."

9. A perusal of the above legal provision makes it clear that it is wide open and empowers the court to allow either party to amend his pleadings. The latter portion of the legal provision stipulates that such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties and thus, it emphasises the scope of the legal provision viz., avoiding multiplicity of proceedings. However, the proviso to such Section has been included by way of amendment in 2002 with an object of preventing frivolous applications, which forbids allowing of such application after the trial had commenced, but, still, such proviso is not an absolute ban as it still paves way for allowing the application if the court comes to the conclusion that inspite of due diligence, the party could not have raised the matter before the commencement of trial. Therefore, the balanced approach of the legislature in rendering justice preventing multiplicity of proceedings as well as frivolous applications is very much clear.



10. Therefore, when an application has been filed by the plaintiff at the appellate stage, the court is bound to consider and come to a conclusion that in spite of due diligence, he could not have raised the matter before the commencement of trial.

11. Placing reliance on the decisions submitted, the learned counsel for the petitioner seeks to emphasise that for allowing the amendment, the court is bound to satisfy itself that the party, who seeks to amend the pleadings, was unable to bring it to the notice of the court despite due diligence, whereas, the plaintiff in the case on hand, having admitted about the sub-division during the cross-examination, cannot be permitted to take a contradictory stand at a latter stage and thereby to plead a fresh cause of action after the period of limitation prescribed for initiating a suit.

12. Before ever proceeding with the merits of the case, it is relevant to note that the boundaries and extent of the suit property has not been denied by the defendant. The settled law that the proper boundaries will prevail over the measurement and survey number has been reaffirmed in **Subhaga v. Shobha** (2006) 5 SCC 466, wherein it has been held as under:-

" ... a property can be identified either by boundary or by any other specific description is well established. Here the attempt had been to identify the suit property with reference to the boundaries and the Commissioner has identified that property



with reference to such boundaries. Even if there was any discrepancy, normally, the boundaries should prevail."

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13. Consideration of amendment sought for at a very belated stage is concerned, in **Peethani Suryanarayana v. Repaka Venkata Ramana Kishore**, (2009) 11 SCC 308, a Division Bench of the Apex Court, while dealing with an appeal challenging the amendment ordered with regard to substitution of Town Survey Number after the final decree was passed, has held as under:-

"18. There cannot be any doubt whatsoever that the principles of natural justice are required to be complied with. But, in a case of this nature, the same would be an empty formality. The facts are not disputed. The identity of the suit land has not been changed. It is not a case where, as submitted by Mr. Mahabir Singh, one land is being substituted by another. The fact that Town Survey No. 463 is a joint family property is not in dispute. As indicated hereinbefore, it is the same plot which was the subject-matter of sale and only in respect thereof the appellants herein could claim partition. The appellants have also furthermore not been able to show as to how and in what manner they have been prejudiced."

14. Possible failure of justice in the event of refusal to permit the

amendment has been predominantly considered by a Full Bench of the Apex



Court in **Sajjan Kumar v. Ram Kishan**, (2005) 13 SCC 89 despite the fact that the plaintiff was not sufficiently diligent when the error in question was pointed out in the written statement and the amendment sought for was allowed. The relevant portion of the decision is extracted hereunder for ready reference:-

"5. Having heard the learned counsel for the parties, we are satisfied that the appeal deserves to be allowed as the trial court, while rejecting the prayer for amendment has failed to exercise the jurisdiction vested in it by law and by the failure to so exercise it, has occasioned a possible failure of justice. Such an error committed by the trial court was liable to be corrected by the High Court in exercise of its supervisory jurisdiction, even if Section 115 CPC would not have been strictly applicable. It is true that the plaintiff-appellant ought to have been diligent in promptly seeking the amendment in the plaint at an early stage of the suit, more so when the error on the part of the plaintiff was pointed out by the defendant in the written statement itself. Still, we are of the opinion that the proposed amendment was necessary for the purpose of bringing to the fore the real question in controversy between the parties and the refusal to permit the amendment would create needless complications at the stage of execution in the event of the plaintiff-appellant succeeding in the suit."



15. In the case on hand, the indisputable fact is that the plaintiff had given the extent of land and boundaries, which are matters for trial, however, he had omitted to furnish the sub-divided survey number. The original survey number viz., 182/25 can be a vast extent while Survey number 182/25B, a sub-divided one, can, if at all, be a part of the same. Such an updated information alone, the plaintiff seeks to furnish in the plaint without any change of cause of action. The only controversy is that the plaintiff seeks to furnish such information only at the appellate stage, of course, after having failed in the suit before the Trial Court. If the plaintiff had succeeded before the Trial Court by furnishing a wrong information with regard to the suit property and later, an application is filed to amend the same to suit his convenience, it would be appropriate to infer that the defendant would be prejudiced by the amendment as he would be deprived of trial on the change of circumstances.

16. Further, it is the specific case and understanding of the defendant as per his written statement that the suit property was sub divided as 182/25 A to D. Such updated information was not brought before the court by the plaintiff acquiring knowledge about the same, however, it seems that the plaintiff had taken a stand as if some sub-division was done at the instance of the defendant. Therefore, it is seen that the plaintiff could not have a very clear idea with regard to the sub-division of the property and bringing the same on record by way of amendment would certainly be useful for the purpose of proper and effective adjudication and not be prejudicial to the defendant, especially, when the information with regard to the sub-division of the property



in question is not a new case and contradictory one giving rise to fresh cause of action, as it is only a part of the original survey number referred in the plaint and was well within the knowledge of the defendant.

17. In such circumstances, the order dated 23.11.2022 passed by the appellate court viz., Principal District Judge, Ariyalur in I.A.No.1 of 2021 in A.S.No.13 of 2018 allowing the amendment sought for by the plaintiff does not warrant any interference. Accordingly, it is confirmed. The civil revision petition is dismissed. No costs. The connected Miscellaneous Petition is closed.

24.01.2025

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Speaking / Non-speaking
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To
Principal District Judge,
Ariyalur.



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12



A.D.JAGADISH CHANDIRA,J.

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**P.D. ORDER IN
C.R.P.No.316 of 2023**

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24.01.2025**