



WEB COPY

CRP No. 6254 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16-12-2025

CORAM

THE HON'BLE MR.JUSTICE S. SOUNTHAR

**CRP No. 6254 of 2025
AND
CMP NO. 30960 OF 2025**

1. D. Thangarasu
2. K.Vaidyanathan
3. V. Prasanna
4. S. Dhivya
5. R. Kavitha
6. V. Prathib
7. S. Kalairasan
8. K. Rahulraj

..Petitioner(s)

Vs

1. Senthil Educational Trust
Rep.by its Managing Trustee E.Senthil Anand
Periyavadavadi, Vijayamanagaram Post,
Virudhachalam Tk, Cuddalore 606 104.
2. E. Senthil Anand
3. E. Chandravadivu
4. N.Elavarasan



5. P. Ganesan

6. M.Vinoth Kumar

7. J. Mohan Kumar

..Respondent(s)

CRP No. 6254 of 2025

To set aside the order dated 11.11.2025 in IA.No. 6/2025 in OS.NO. 58/2020 on the file of Additional Subordinate Judge, Virudhachalam.

CMP No. 30960 of 2025

To stay the operation of the order dated 11.11.2025 passed in IA.No.6/2025 in OS.No. 58/2020 on the file of learned Additional Subordinate Judge, Vridhachalam.

For Petitioner(s): Mr.Abdul Saleem,
Senior Advocate For
M/s.S.Shyamkumar

For Respondent(s): Mr.Kanmani Annamalai
For M/s.Tamizh Law Firm
For Caveators/R1 To R3 (in Sr Stage)

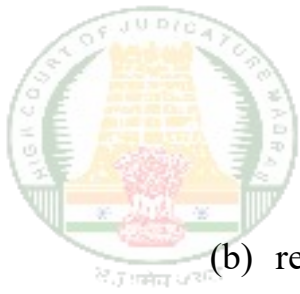
Order

This Civil Revision Petition is filed challenging the order passed by the trial court allowing the application filed by the respondents 1 to 3/plaintiffs seeking amendment of plaint.

2. The respondents 1 to 3 filed a suit seeking the following reliefs:-

(a) declaring that the defendants 2 to 12 are not the duly co-opted trustees of the 1st plaintiff trust;

/consequently/



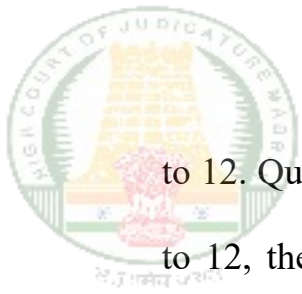
(b) restraining the defendants 2 to 12 by means of a decree of permanent injunction from functioning as trustees and from in any manner interfering in the management and administration of the 1st plaintiff trust and the Educational Institutions of the 1st plaintiff by the plaintiffs 2 and 3;

(c) declaring that the 2nd plaintiff is the duly co-opted Life Time Managing Trustee of the 1st plaintiff trust and its educational institutions;

/consequently/

(d) restraining the 6th defendant by means of a decree of permanent injunction from in any manner interfering in the management and administration of the 1st plaintiff trust and the Educational Institutions of the 1st plaintiff by the 2nd plaintiff;

In the plaint, it was stated by the plaintiffs that the 2nd respondent/2nd plaintiff was in management of 1st respondent/plaintiff trust and the 1st defendant without having any power or authority under the instrument of Trust executed a deed styled as Addendum deed dated 02.04.2007 and co-opted the defendants 2 to 4 as Trustees along with one Rajeswari. Subsequently, another deed of Addendum was executed on 25.10.2013 by the 1st defendant co-opting 5th defendant as trustee of 1st plaintiff trust. Again, yet another Addendum deed was executed on 29.07.2019 co-opting 6th defendant as trustee, who in turn co-opted defendants 7



to 12. Questioning the above Addendum deed and the co-option of defendants 2 to 12, the above suit was filed by the plaintiffs. The suit was resisted by the defendants by filing written statement. The Issues in the suit were framed on 13.03.2025 and the matter was adjourned to 02.04.2025 for trial. In the meantime, the plaintiffs have filed an instant application on 17.03.2025 seeking amendment of plaint.

3. In the affidavit filed in support of amendment of plaint, it was stated by the plaintiffs that taking advantage of the order passed by the Executive Magistrate on 28.02.2020 under Sec.145 of Criminal Procedure Code, the defendants 2 to 12 had forcefully taken over the management of the 1st plaintiff trust and its educational institution on 28.02.2020. Subsequently, the said order passed by the Executive Magistrate was quashed by this court. It was further stated that since the defendants 2 to 12 had taken over the management of the 1st plaintiff trust on 28.02.2020, the plaintiffs sought for inclusion of prayer for mandatory injunction directing the defendants to hand over the management of 1st plaintiff trust to plaintiffs 2 and 3 and to restore the status quo. They have also sought for inclusion of paragraph 16(a), which contains necessary averments in support of prayer for mandatory injunction. The said amendment application was opposed by the petitioners on various grounds, however, the trial court was pleased to allow the amendment application. Aggrieved by the said order, the petitioners/defendants 2, 3, 5 to 8, 10 and 11 have come by way of this Civil Revision Petition.



4. The learned senior counsel appearing for the petitioner assailed the impugned order passed by the trial court on the following two grounds:-

(i) The amendment application has been filed subsequent to the commencement of trial and therefore, in view of proviso to Order VI Rule 17 of C.P.C., unless plaintiffs establish exercise of due diligence, the trial court ought not have allowed the amendment application. He elaborated it by saying that the trial in the suit commences with the settlement of issues and in the case on hand, issues were settled on 13.03.2025 and the amendment application was filed on 17.03.2025. Therefore, the plaintiffs are bound to satisfy proviso to Order VI Rule 17 of C.P.C. In support of his contentions, the learned senior counsel relied on the judgment of Apex Court in the case of ***Kailash vs. Nanhku and others*** reported in ***(2005) 4 SCC 480***.

(ii) Secondly, the learned senior counsel submitted that for the purpose of amendment application, it was stated by the plaintiffs that defendants 2 to 12 had taken over management on 28.02.2020, in various other collateral proceedings, like Criminal Revision, Criminal Original Petition filed against the order passed by the Executive Magistrate and also Writ Petition, the plaintiffs had taken a stand as if they continued to be in management of the trust. Therefore, the averment made by the plaintiffs in the amendment application as if the defendants 2 to 12 had taken over management on 28.02.2020, taking



advantage of the order passed by the Executive Magistrate is nothing but falsehood and abuse of process.

WEB COPY

5. Per contra, learned counsel appearing for respondents 1 to 3 would submit that subsequent to the filing of the suit, the defendants 2 to 12 had taken over the management of 1st plaintiff trust and hence, the plaintiffs were constrained to seek prayer for mandatory injunction directing them to hand over management. The learned counsel further submitted that while considering the amendment application, the Court shall avoid hyper-technical approach and should be very liberal when the amendment is necessary for adjudication. In support of his contentions, he relied on the judgment of Apex Court in the case of ***Dinesh Goyal @ Pappu vs. Suman Agarwal (Bindal) and others*** reported in **2024 INSC 726**. He had also submitted that recording of evidence has not begun in the present case. Therefore, the trial is not deemed to be commenced and accordingly, the amendment application shall be treated as a pre-trial amendment application and embargo imposed by the proviso to Order VI Rule 17 of C.P.C. is inapplicable to the facts of the case.

6. Proviso to Order VI Rule 17 of C.P.C. reads as follows:-

“Order VI Rule 17 of Civil Procedure Code :-

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”

A perusal of the above provision would make it clear, a party applying for amendment after commencement of trial, shall establish before the court that in spite of exercise of due diligence, he was unable to apply for amendment prior to commencement of trial. Therefore, the embargo imposed by the proviso to Order VI Rule 17 of C.P.C. comes into operation, in case amendment application is filed after the commencement of trial. The same can be gathered from the employment of expression “after the trial has commenced” in proviso to Order VI Rule 17 of C.P.C. In view of the above said expression employed in the proviso, an important question arising for consideration is, when the trial commences in a civil suit.

7. In ***Kailash*** case cited by learned senior counsel appearing for petitioners, while considering the commencement of trial in an Election Petition, the Apex Court observed in para 13 as follows :-

“Trial” of election petition, when it commences?

13. At this point the question arises : when does the trial of an election petition commence or what is the meaning to be assigned to the word



“trial” in the context of an election petition? In a civil suit, the trial begins when issues are framed and the case is set down for recording of evidence. All the proceedings before that stage are treated as proceedings preliminary to trial or for making the case ready for trial. As held by this Court in several decided cases, this general rule is not applicable to the trial of election petitions as in the case of election petition, all the proceedings commencing with the presentation of the election petition and up to the date of decision therein are included within the meaning of the word “trial”.”

Therefore, in a civil suit, trial begins when the issues are framed and the case is set down for recording of evidence. Relying on this expression, the learned senior counsel for petitioner vehemently contended that the trial commences on the day, the issues are settled. However, in the above mentioned judgment, the Apex Court observed that trial begins when the Issues are framed and the case is set down for recording of evidence. Therefore, the process of commencement of trial not only consists of settlement of issues alone, but it also consists of fixing of date for recording of evidence. Therefore, it is clear that fixing of date for recording of evidence also comes within the expression “beginning of trial”. Once recording of evidence has started, the proceedings in the suit become post-trial proceedings. Till the recording of evidence starts, the court will be in the process of fixing the date for recording of evidence and therefore, the trial remains in the commencement stage. It is a matter of common knowledge, the recording of evidence will start only after the case is listed for trial in a special list. In most of the cases, after the settlement of issues, the Court will formally



fix the date for trial and if the recording of evidence has not been started on the date fixed, the court will again re-fix the date and adjourn the matter. It is a matter of common knowledge, the suit will be adjourned periodically by re-fixing the date for commencement of trial and it will be taken up for hearing only after the suit is included in the special list for recording of evidence. Till the suit is posted in the special list for recording of evidence, the date for commencement of trial will be periodically re-fixed by the trial court. Therefore, till the case is posted in the special list and recording of evidence of P.W.1 starts, the court will be in the process of fixing/re-fixing the date of hearing for recording of evidence. In such case, the process of fixing the date continues till it is posted in the special list and recording of evidence commences.

8. In view of the above discussions, we can broadly divide the civil suit proceedings into three stages :-

- (a) Pre-trial stage – during which pleadings are filed and case is adjourned for framing of Issues.
- (b) Commencement of trial – Issues are framed and case is set down for recording of evidence.
- (c) Post-trial stage – recording of evidence, arguments and delivery of judgment.



If we have a close look at proviso to Order VI Rule 17 of C.P.C., the embargo created by proviso is applicable only after commencement of trial. The expression used in the proviso i.e. “after the trial has commenced” will get attracted only in post-trial stage i.e. from the stage on which recording of evidence begin and so on. The stage from framing of issues to beginning of recording of evidence shall be treated as commencement of trial. During that stage, amendment application can be entertained without reference to proviso to Order VI Rule 17 of C.P.C., because the proviso get attracted only for the amendment application, which is filed after the commencement of trial. In ***Kailash*** case, it was clearly mentioned, trial begins when issues are framed and the case is set down for recording of evidence. In fact, the emphasis is on the employment of conjunction between phrases “issues are framed” and “case is set down for recording of evidence”. The second expression “the case is set down for recording of evidence” cannot be divorced from the first expression “issues are framed” and first expression cannot be read in isolation. Therefore, the process of commencement of trial continues till recording of evidence starts.

9. In fact, the Apex Court in yet another decision in the case of ***Vidyabai and Ors. vs. Padmalatha and others*** reported in ***MANU/SC/8401/2008*** equivalent to ***(2009) 2 SCC 409***, while considering the stage of the suit, in which proviso to Order VI Rule 17 of C.P.C. gets attracted, observed in para 8 as follows :-



“8. From the order passed by the learned trial judge, it is evident that the respondents had not been able to fulfill the said pre-condition:-

The question, therefore, which arises for consideration is as to whether the trial had commenced or not. In our opinion, it did. The date on which the issues are framed is the date of first hearing. Provisions of the Code of Civil Procedure envisage taking of various steps at different stages of the proceedings. Filing of an affidavit in lieu of examination in chief of the witness, in our opinion, would amount to ‘commencement of proceeding’.”
[Emphasis supplied]

Therefore, it is clear that once the recording of evidence is started, the stage of the suit becomes post-trial stage and consequently proviso to Order VI Rule 17 of C.P.C. gets attracted.

10. In the light of the above discussions, let us see the case on hand. In the present suit, on 13.03.2025, the issues were framed by perusing the pleadings and matter was adjourned to 02.04.2025 for trial. Therefore, it is clear, on 13.03.2025 recording of evidence was not started. In the meantime, on 17.03.2025, the instant application for amendment has been filed. Therefore, it is clear that application for amendment of plaint has been filed prior to the date, which was fixed for recording of evidence. Therefore, the suit is still in the stage of commencement of trial and it has not reached the post-trial stage. In view of the same, I hold that the proviso to Order VI Rule 17 of C.P.C. is not



attracted in the case and hence, the amendment application filed by the plaintiffs can be liberally considered without reference to proviso to Order VI Rule 17 of C.P.C. Therefore, it is not necessary for the plaintiffs to establish that inspite of exercise of due diligence, they were prevented from seeking amendment prior to commencement of trial.

11. A close perusal of original prayer in the plaint would make it clear, due to subsequent event pleaded in the amendment application viz., forcible take over of the management by defendants 2 to 12 subsequent to the filing of the suit, the original prayer sought for in the suit had become inappropriate or insufficient. In such circumstances, the respondents 1 to 3 were constrained to seek inclusion of prayer for mandatory injunction and a direction directing the defendants to hand over the management, which was allegedly taken over by them pending suit. The court can always take into consideration the subsequent event and mould the relief suitably even without a prayer, provided it comes to the conclusion that the event had taken place pending suit. Hence, Court can take liberal view of the matter and allow the amendment.

12. It is vehemently contended by the learned senior counsel appearing for petitioner all along, in a collateral proceedings, plaintiffs mentioned that they were in management of the Trust even subsequent to the presentation of plaint. However, in the amendment application, they have taken a new plea as if



management was taken over by the defendants on 28.02.2020. At the stage of considering the amendment application, we cannot go into the veracity or correctness of the pleas sought to be included by way of amendment. Whether the new plea introduced by the plaintiffs by way of amendment is true or not is a matter for evidence and the same can be decided only at the time of trial. Therefore, I am not impressed by the contention made by the learned senior counsel for petitioners. The said point can very well be raised by the petitioners by filing additional written statement, which they are entitled to as a matter of right. They can also lead necessary evidence at the time of trial in this regard. In view of the same, allowing of amendment application will not cause any serious prejudice to the petitioners.

13. In view of the discussions made earlier, this Civil Revision Petition stands dismissed by confirming the order passed by the trial court in I.A.No.6 of 2025 in O.S.No.58 of 2020 on the file of Addl. Subordinate Judge, Virudhachalam. The Petitioners are at liberty to file additional written statement raising all their defence. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

16-12-2025

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
RPP
To
Addl. Subordinate Judge, Virudhachalam.



WEB COPY

CRP No. 6254 of 2



S.SOUNTHAR J.

RPP

**CRP No. 6254 of 2025
AND
CMP NO. 30960 OF 2025**

16-12-2025