



C.R.P(MD)No.885 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 17.12.2024
DELIVERED ON : 23.01.2025

CORAM:

THE HON'BLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

C.R.P(MD)No.885 of 2022
and
C.M.P(MD)No.3533 of 2022

1.Marimuthu

2.Poovarasam

... Petitioners

Vs.

1.Sivasamy Kumar

2.K.Abbas

... Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and executable order passed in I.A.No.2 of 2021 in O.S.No.194 of 2014 by the learned Subordinate Judge, Sivagangai, dated 13.12.2021 and pass such order or other orders as this Court.

For Petitioners : Mr.M.Rajaraman

For Respondents : Mr.S.Srinivasa Raghavan



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ORDER

This Civil Revision Petition is preferred against the order passed in I.A.No.2 of 2021 in O.S.No.194 of 2014 by the learned Sub Judge, Sivagangai on 13.12.2021.

2. The revision petitioners as plaintiffs filed the above suit in O.S.No. 194 of 2014 before the Sub Court, Sivagangai for the relief of declaration to declare the registered general power deed, dated 10.09.2012 executed by the revision petitioners / plaintiffs in favour of the first respondent / first defendant as null and void and for permanent injunction.

3. According to the revision petitioners, the revision petitioners filed an application under Order VI, Rule 17 of the Civil Procedure Code, 1908 for amending the plaint in I.A.No.690 of 2017 and the same was dismissed on 17.09.2018 giving liberty to file a fresh amendment petition. Due to Covid-19 pandemic, the revision petitioners were unable to file a fresh petition for amendment at the earliest. Moreover, the revision petitioners are permanent residents of Malaysia and therefore, they could not take steps to



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file a fresh petition in time and also in view of the Covid-19 pandemic. The Trial Court dismissed the subsequent application in I.A.No.2 of 2021 for amendment only on the ground of delay.

4. The learned Counsel appearing for the revision petitioners would submit that originally the suit was filed for declaration and injunction and during pendency of the suit, the respondents / defendants have put up construction in the suit property and therefore, it has become necessary for the revision petitioners / plaintiffs to seek for an amendment in the plaint by including a prayer for mandatory injunction to remove the illegal construction made in the suit property and for recovery of possession. However, the Trial Court without considering the necessity of the said petition, erroneously dismissed the same which calls for interference by this Court.

5. On the other hand, the learned Counsel appearing for the respondents would submit that even at the time of filing the plaint, the second defendant was in possession and enjoyment of the suit property by constructing a house in the same. The revision petitioners / plaintiffs



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suppressing the above facts, falsely contended that the defendants trespassed into the suit property. The revision petitioners / plaintiffs have no right or title over the suit property. The earlier application filed by the revision petitioners / plaintiffs in I.A.No.690 of 2017 was dismissed on 17.09.2019 by the Trial Court. Thereafter, the present application was filed only in the year 2021 with enormous delay seeking to amend the plaint by including the prayer for mandatory injunction and recovery of possession which is un-sustainable. Therefore, the Trial Court has rightly rejected the said application in I.A.No.2 of 2021 which calls for no interference by this Court.

6. Heard the learned Counsel for the petitioners and the learned Counsel for the respondents and perused the materials available on record.

7. It is not in dispute that the earlier application filed by the revision petitioners / plaintiffs in I.A.No.690 of 2017 seeking for amendment to include the prayer for mandatory injunction was dismissed by the Trial Court with liberty to file a fresh application after rectifying the defects pointed out in the earlier application. The said application was dismissed on



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17.09.2019 by the Trial Court. Thereafter, in the year 2021, the revision petitioners / plaintiffs filed the present petition in I.A.No.2 of 2021 for amending the plaint by including the reliefs for mandatory injunction and recovery of possession stating that the defendants have encroached upon the suit property during pendency of the suit and therefore, it has become necessary for seeking the relief of mandatory injunction and recovery of possession. Otherwise, the petitioners will be put into hardship and irreparable loss. The further contention of the revision petitioners is that though the earlier application for amendment was dismissed on 17.09.2018, and since the revision petitioners are permanent residents of Malaysia, they were unable to file the present application for amendment in time.

8. Order VI, Rule 17 of the amended C.P.C., reads as follows:

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:



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

9. As far as the first part of the provision, the law permits a party to amend his pleadings which are essential for determining the real question in controversy between the parties and the Courts are to liberally approach the matter. Insofar as the second part viz., the proviso to section is concerned, the Trial Court shall not automatically or mechanically allow the amendment application when it is sought to be introduced after the commencement of trial and if the Court feels that it can be allowed, then it has to satisfy itself and furnish reasons as to the fact that the party, in spite of his due diligence, could not raise the matter anterior to the commencement of the trial. It is mandatory on the part of the Court while allowing the post trial amendments to record the reasons as regards its satisfaction to the said aspect.

10. In **2006 (5) CTC 475 [Kodiammal Vs. Sarangapani]**, it is held that when the proposed amendment does not alter nature and character of



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suit to bring in new cause of action, Courts ought to be liberal in granting amendment for effective adjudication.

11. In the case of *Kaliathal Vs. Murugathal and other* reported in **2006 (5) CTC 580**, this Court has observed that the amendment may be allowed which would avoid multiplicity of proceedings by filing another suit for such relief.

12. A Full Bench of this Court has elaborately discussed the issue on allowing of amendment applications under Order VI, Rule 17 on the strength of various judgment of this Court and the Hon'ble Supreme Court.

13. Therefore, only when the proposed amendment introduce a new cause of action or new case, the same cannot be allowed. Whereas, the said amendment is necessary to decide the issue in the suit at any stage of the case the amendments ought to be allowed to have an effective adjudication and to avoid multiplicity of proceedings. In the present case, the proposed amendment neither introduces a new cause of action or a new case. The proposed amendment is sought for by the revision petitioners stating that



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during pendency of the suit, the respondents / defendants encroached upon the suit property and have put up constructions.

14. The contention of the respondents / defendants is that even at the time of filing the suit, the respondents / defendants were in possession and enjoyment of the suit property. The above facts can be dealt with only at the time of trial. In dealing with prayers for amendment of the pleadings, the Court should avoid hyper technical approach and allow the amendment petition, even if it is time barred if it causes no prejudice to the other side. Therefore, the mere delay in filing the application for amendment is not fatal when no serious prejudice is shown to have caused to the respondents / defendants so as to take away any accrued right and the Court should take notice of the subsequent events in order to shorten the litigation to preserve and safeguard the rights of both the parties and to subserve the ends of justice. Therefore, amendments of pleadings should be allowed which are necessary for determination of the real controversy in the suit and while doing so, the Court should not go into the correctness or falsity of the main case and it should not record the finding on the merits of the amendment as it should be done only during the trial of the suit.



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15. Adverting to the facts of the present case, though the amendment petition was filed with delay, this Court is of the considered opinion that the proposed amendment would noway prejudice the rights of the respondents / defendants. It is obvious that there could be no change in the nature of the suit. However, the respondents are at liberty to raise all their objections at the time of trial with regard to possession of the property by filing additional written statement and cross examine the witness in this regard.

16. In such view of this matter, the order passed by the Trial Court is liable to be set aside and accordingly, set aside.

17. In fine, this Civil Revision Petition stands allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

23.01.2025

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

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To

The Subordinate Judge,
Sivagangai.



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K.GOVINDARAJAN THILAKAVADI, J.

BTR

Order made in
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