



CRP(MD)No.1073 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 08.01.2025

CORAM:

THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

CRP(MD)No.1073 of 2021
and
C.M.P(MD)No.6246 of 2021

1.S.Kavitha
2.R.Karthika

... Petitioners/Petitioners/Plaintiffs

Vs

1.M.Sulokshana
2.Pradeepa
3.K.Venugopal (Died)

... Respondents/Respondents/Defendants

Prayer:

This Petition is filed under Article 227 of the Constitution of India, to set aside the Executable Order and Fair Order dated 23.11.2020 made in I.A.No.1 of 2019 in O.S.No.132 of 2016 on the file of the Subordinate Judge, Theni.

For Petitioners : Mr.R.Suriya Narayanan

For Respondents : Mr.S.Sarvagan Prabhu for R1 and R2



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ORDER

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The Civil Revision Petition is filed to set aside the executable order and fair order dated 23.11.2020 made in I.A.No.1 of 2019 in O.S.No.132 of 2016 on the file of the Subordinate Judge, Theni.

2.The petitioners are the plaintiffs in the suit in O.S.No.132 of 2016. Originally, the suit was filed for declaration and permanent injunction. The respondents had filed their written statement in the year 2016 itself. Pending the suit, the revision petitioners had filed an application in I.A.No.1 of 2019 to amend the plaint with regard to the relief of declaration and permanent injunction on the ground that the respondents/defendants had forcibly entered into the suit schedule property on 02.01.2019 and other dates. The trial Court, by taking into consideration the pleadings and documents of both sides, had categorically stated that the defendants have forcibly entered into the suit schedule property on 02.01.2019 cannot be acted upon and also dismissed the said I.A.No.1 of 2019.

3.The learned counsel appearing for the respondents would contend that in the written statement itself, the respondents/defendants had categorically admitted that they were in possession of the suit schedule property and the present petition



is filed only to overcome the latches which were filed at the time of filing the
plaint. As it is an admitted fact of the respondents that they were in possession of
the suit schedule property, if such an amendment is allowed, the entire character
of the suit will be changed. In support of his contention, he has also relied upon
the Judgment of the Hon'ble Supreme Court of India in ***Rame Gowda (Dead) By
Lrs. Vs. M.Varadappa Naidu (Dead) By Lrs. And another*** reported in ***2004 (1)
SCC 769***. The relevant portion of the said Judgment is extracted hereunder:

“....12.The learned counsel for the appellant relied on the Division Bench decision in *Sri Dasnam Naga Sanyasi and Anr. Vs. Allahabad Development Authority, Allahabad and Anr.* reported in AIR 1995 Allahabad 418 and a Single Judge decision in *Kallappa Rama Londa Vs. Shivappa Nagappa Aparaj and Ors.* reported in AIR 1995 Karnataka 238 to submit that in the absence of declaration of title having been sought for, the suit filed by the plaintiff-respondent was not maintainable, and should have been dismissed solely on this ground. We cannot agree. *Dasnam Naga Sanyasi's* case relates to the stage of grant of temporary injunction wherein, in the facts and circumstances of that case, the Division Bench of the High Court upheld the decision of the court below declining the discretionary relief of ad-interim injunction to the plaintiff on the ground that failure to claim declaration of title in the facts of that case spoke against the conduct of the plaintiff and was considered to be 'unusual'. In *Kallappa Rama Londa's* case, the learned Single Judge has upheld the maintainability of a suit merely seeking injunction, without declaration of title, and on dealing with several decided cases the learned Judge has agreed with the proposition that where the suit for declaration of title and injunction is filed and the title is not clear, the



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*question of title will have to be kept open without denying the plaintiff's claim for injunction in view of the fact that the plaintiff has been in possession and there is nothing to show that the plaintiff has gained possession by any unfair means just prior to the suit. That is the correct position of law. In **Fakirbhai Bhagwandas and Anr. Vs. Maganlal Haribhai and Anr.** reported in AIR 1951 Bombay 380 a Division Bench spoke through Bhagwati, J. (as his Lordship then was), and held that it is not necessary for the person claiming injunction to prove his title to the suit land. It would suffice if he proves that he was in lawful possession of the same and that his possession was invaded or threatened to be invaded by a person who has no title thereof. We respectfully agree with the view so taken. The High Court has kept the question of title open. Each of the two contending parties would be at liberty to plead all relevant facts directed towards establishing their titles, as respectively claimed, and proving the same in duly constituted legal proceedings. By way of abundant caution, we clarify that the impugned judgment shall not be taken to have decided the question of title to the suit property for or against any of the contending parties."*

4.The learned counsel appearing for the revision petitioners to countenance the Judgment of the Hon'ble Supreme Court of India in the above case, he had relied upon the Judgment of the Hon'ble Supreme Court of India in **Nichhalbhai Vallabhai and others Vs. Jaswantlal Zinabhai and others** reported in **1965 SCC Online SC 248**. The relevant portion of the said Judgment is extracted hereunder:



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*“...5. We shall then proceed to consider the next question whether the High Court was right in allowing the application of the plaintiff for amending the plaint by deleting the words "vus Ns (and have)" in "ves Nh;s (i.e. para 2 and the words 'and are')" in para 3 of the plaint. It was contended by Mr. Purshotam Trikumdas on behalf of the appellants that by allowing the amendment the High Court had permitted the plaintiff to convert the suit into another of a different and inconsistent character. It was submitted by Counsel that if the suit was one for severance of joint family status the plaintiff was bound to fail in limine in view of the decision of the Bombay High Court in *Apaji Vs. Ramchandra* reported in (1892) ILR 16 Bom 29 (FB). It was contended that the plaintiff cannot be allowed to escape this consequence by amending a suit as one for partition by metes and bounds. We do not think that there is any warrant for this argument. We consider that the High Court was right in taking the view that the words "vus Ns (and have)" and the words "ves Nh;s (i.e. 'and are')" were put in paras 2 and 3 of the plaint by mistake and inadvertence and it was, therefore, a proper case in which the court should exercise its discretion under Order 6, Rule 17 of CPC by allowing the amendment to be made. It was contended by Mr. Purshotam Trikumdas that the plaintiff was introducing a new case by making the amendment. We do not accept this argument as correct. We have already given reasons for holding that even apart from the amendment the plaint should be properly construed as asking for relief for partition by metes and bounds and not for severance of*



joint family status. We are of opinion that the words "vus Ns (and have)" "ves Nh;s in para 2 and the words (i.e. 'and are')" in para 3 of the plaint have been inserted on account of some mistake or misapprehension on the part of the plaintiff and it was, therefore, a proper case in which the Court allowed the plaint to be amended. The reason is that if the amendment is refused the plaintiff may have to bring another suit and the object of the rule for allowing amendments to the plaint is to avoid multiplicity of suits. The present case falls within the principle laid down by this Court in L.J.Leach and Co. Ltd. V. Jardine Skinner and Co. reported in 1957 SCR 438. In that case the appellants had filed a suit for damages for conversion against the respondents on the allegations that the respondents were the agents of the appellants, that the appellants had placed orders for certain goods with the respondents, and that the respondents had actually imported the goods but refused to deliver them to the appellants. The suit was dismissed on the findings that the parties stood in the relationship of seller and purchaser, and not agent and principal and that the title in the goods could only pass to the appellants when the respondents appropriated them to the appellants' contracts. In appeal before the Supreme Court, the appellants applied for amendment of the plaint by raising, in the alternative, a claim for damages for breach of contract for nondelivery of the goods. The application was allowed by this Court on the ground that it was a fit case in which the amendment should be allowed and the fact that a fresh suit on the amended claim was barred by limitation is only a factor to be taken into consideration in the exercise of the discretion as to whether the amendment should be ordered or not, and does not affect the power of the court to order it, if that is



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required in the interests of justice. The case of the plaintiff for amendment in the present case stands on a stronger footing because there is no question of limitation involved and we are of the opinion that the High Court was right in permitting the amendment to be made and remanding the suit to the trial Court for a fresh hearing in accordance with law.”

5. In the above said case, the Hon'ble Supreme Court of India has held that to avoid the multiplicity of cases, the amendment ought to have been allowed. To substantiate the same, the learned counsel for the petitioners had relied upon the Judgment of the Hon'ble Supreme Court of India in ***Life Insurance Corporation of India Vs. Sanjeev Builders Pvt. Ltd. and another*** reported in ***2023 (1) MWN (Civil) 87***, more specifically to paragraphs 7, 11 and 70(iii). The guidelines enumerated by the Hon'ble Supreme Court of India in the above case are not in dispute. However, in the present case, while allowing the amendment application, the said amendment should not give a new character to the entire suit and which will affect the rights of the parties. The petitioners have not produced any materials to show that the respondents/defendants had forcibly entered into the suit schedule property, which is a coconut thop on 02.01.2019 and on other subsequent dates. However, the learned counsel for the petitioners would contend that even in their plaint, they have stated that, they are in possession of the suit schedule property. It is left open to the parties to file necessary application before



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the trial Court to examine regarding possession, the plaint for recovery of possession has to be determined by the trial Court, by taking into consideration of the limitation too.

6. With the above observations, the Civil Revision Petition is disposed of.
No costs.

7. Since the suit is of the year 2016, the learned Subordinate Judge, Theni, is directed to dispose of the case in O.S.No.132 of 2016, within a period of one year from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

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

The Subordinate Judge, Theni.



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N.SENTHILKUMAR, J.

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