
(2011) 08 MAD CK 0053
In the Madras High Court
Case No : C.R.P. (PD) (MD) No. 1144 of 2009

Arockiadoss

APPELLANT

Vs

The Tiruchi City Corporation and Nixon

RESPONDENT

Date of Decision : 17-08-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17

Citation : (2011) 08 MAD CK 0053

Hon'ble Judges : P.P.S. Janarthana Raja, J

Bench : Single Bench

Advocate : A.V. Rajasekaran, for the Appellant; P. Srinivas, for R 1 and T. Lajapathy Roy, for R 2, for the Respondent

Final Decision : Allowed

Judgement

P.P.S. Janarthana Raja, J.—This Civil Revision Petition has been filed against the order dated 21.04.2009 passed in I.A. No. 1012 of 2008

in O.S. No. 1024 of 2006 on the file of the Principal District Munsif at Tiruchi.

2. The Petitioner herein is the Plaintiff and the Respondents herein are the Defendants in the suit. The Petitioner/Plaintiff filed a suit before the

Principal District Munsif, Tiruchirappalli for permanent injunction against the Defendants restraining them, their heirs, servants, men and agents and

Ors. who claim under him from not to interfere with the Plaintiff's peaceful possession and enjoyment of the suit property by encroaching the suit

property or by putting up offending structures or materials and in any manner whatsoever. The Defendants filed written statement denying all the

allegations made in the plaint and stating that the suit is devoid of merits and hence the same should be dismissed. Subsequently, the Plaintiff filed

I.A. No. 1012 of 2008 for amending the plaint and requested the Court to amend

the prayer to grant decree and judgment of mandatory injunction against the first and second Defendants directing them to demolish the illegal encroachment made in the suit property and to further direct the second Defendant to deliver the vacant physical possession of the suit property as it has existed before the filing of the suit. The Defendants filed a counter stating that the I.A. should be dismissed since it will change the character of the suit. After considering the arguments advanced on both the sides, the Trial Court rejected the said I.A. on the ground that it was filed belatedly and also after commencement of the trial. Aggrieved over the same, the present Civil Revision Petition has been filed by the Petitioner / Plaintiff.

3. Learned Counsel for the Petitioner/Plaintiff has submitted that the Trial Court is wrong in holding that the amendment petition was filed belatedly and after commencement of the trial. He relied on the following judgments of the Apex Court in support of his proposition:

- a) N.E. Railway Administration, Gorakhpur v. Bhagwan Das AIR 2008 SCW 3159;
- b) Surender Kumar Sharma Vs. Makhan Singh, and.
- c) Chander Kanta Bansal Vs. Rajinder Singh Anand, .

Therefore, the Learned Counsel for the Petitioner/Plaintiff has submitted that the impugned order passed by the Trial Court is not in accordance with law and hence the same should be set aside.

4. Learned Counsel for the Respondents/Defendants vehemently contended that the Petitioner/Plaintiff filed the petition for amendment of the plaint belatedly and also after commencement of the trial. Also it will change the character of the suit. The Trial Court has considered all the facts and circumstances of the case and correctly rejected the I.A. Further, it is submitted that the Petitioner/ Plaintiff, in the pretext of amendment, has introduced a new case by way of filing the present I.A. Learned Counsel for the Respondents further contended that in paragraph-6 of the plaint, the Plaintiff himself stated that the Defendants started digging and carried out construction work and therefore, the Defendants, before filing the plaint, have started construction. Hence, the Plaintiff should have made appropriate prayer in the plaint, but he has filed the I.A. for amendment belatedly without any reason. Therefore, the impugned order passed by the Trial Court is in accordance with law and hence the same should be

confirmed.

5. Heard the Learned Counsel on both the sides and perused the materials available on record. It is an admitted fact that the Petitioner/Plaintiff

wants to convert the relief of permanent injunction into mandatory injunction directing the Defendants to demolish the illegal encroachment made in

the suit property and further direct the second Respondent to deliver the vacant physical possession of the suit property as it was existed before

the filing of the suit. It is also not in dispute that at the time of filing the plaint, the Plaintiff himself admitted that the Defendants started putting up

construction. The Trial Court rejected the plaint on the ground that the application for amendment of the plaint was filed after commencement of

the trial and also after examination of the witnesses. Merely because it is stated in the plaint that the Defendants started construction, it will alone

not sufficient to reject the petition for amendment. In paragraph-12 of the Trial Court's order, it is stated that the amendment was filed after the

commencement of the trial and also it is not maintainable in the eye of law and that the petition for amendment was filed belatedly and no

explanation was offered. It is well settled principle that amendment petition can be filed even after commencement of the trial. So, the Trial Court is

wrong in holding that it cannot be filed after the commencement of the trial. In the present case, the Petitioner/ Plaintiff stated in the I.A. that the

Defendants only started construction and later it was completed. So, it cannot be said that there is no explanation. The scope of amendment of

plaint as well as written statement have already been considered by the Apex Court in the case of N.E. Railway Administration, Gorakhpur v.

Bhagwan Das (AIR 2008 SCW 3159) and it was held that the amendment of plaint is permissible even at the appellate stage. Paragraph-15 of the

above judgment, reads 0as under:

15. Insofar as the principles which govern the question of granting or disallowing amendments under Order 6 Rule 17 CPC (as it stood at the

relevant time) are concerned, these are also well settled. Order 6 Rule 17 CPC postulates amendment of pleadings at any stage of the

proceedings. In Pirgonda Hongonda Patil v. Kalgonda Shidgonda Patil and Ors. which still holds the field, it was held that all amendments ought to

be allowed which satisfy the two conditions: (a) of not working injustice to the

other side, and (b) of being necessary for the purpose of

determining the real questions in controversy between the parties. Amendments should be refused only where the other party cannot be placed in

the same position as if the pleading had been originally correct, but the amendment would cause him an injury which could not be compensated in

costs.

In *Surender Kumar Sharma Vs. Makhan Singh*, , the Apex Court has held in paragraph-6 of the judgment as under:

6. It is also well settled that even if the amendment prayed for is belated, while considering such belated amendment, the court must bear in favour

of doing full and complete justice in the case where the party against whom the amendment is to be allowed, can be compensated by costs or

otherwise. (See *B.K. Narayana Pillai v. Parameswaran Pillai*.) Accordingly, we do not find any reason to hold that only because there was some

delay in filing the application for amendment of the plaint, such prayer for amendment cannot be allowed.

In *Revajeetu Builders and Developers v. Narayaswamy and Sons* 2009 (13) SCALE 241, the Apex Court has considered the scope of

amendment under Order 6 Rule 17, and had given certain basic principles that have to be taken into consideration while allowing or rejecting the

application for amendment, in paragraph-67, which reads as under:

67. On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while

allowing or rejecting the application for amendment.

(1) Whether the amendment sought is imperative for proper and effective adjudication of the case?

(2) Whether the application for amendment is bona fide or mala fide?

(3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(4) Refusing amendment would in fact lead to injustice or lead to multiple litigation;

(5) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case? and

(6) As a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of

application.

In *Gayathri Womens Welfare Association Vs. Gowramma and Another*, the Apex Court has considered the scope of amendment of written

statement at the appellate stage and held in paragraphs-36 and 37 of the judgment as under:

36. In *Revajeetu Builders* this Court reiterated the very wide discretion the courts have in the matter of amendment of pleadings. These

observations were in the context of an application filed by the Appellant, seeking amendment of the original plaint including the prayer clause being

rejected by the High Court upon coming to a definite conclusion that the Appellant while seeking permission to amend the plaint is trying to

introduce a new case, which was not his case in the original plaint and the proposed amendment, if allowed, would certainly affect the rights of the

Respondents adversely. It was also held that any such amendment, which changes the entire character of the plaint, cannot be permitted and that

too, after a lapse of four years and after the institution of the suit.

37. This Court, upon a detailed consideration of the historical background of Order 6 Rule 17 and upon a comprehensive survey of the case law,

concluded that the amendment can be permitted, if it was necessary for the determination of the real question in controversy. If that condition is not

satisfied, the amendment cannot be allowed. It was also observed as follows: (*Revajeetu Builders* case, SCC p. 101, para 60)

60...."22. ... The power to allow an amendment is undoubtedly wide and may at any stage be appropriately exercised in the interest of justice, the

law of limitation notwithstanding. But the exercise of such far-reaching discretionary powers is governed by judicial considerations and wider the

discretion, greater ought to be the care and circumspection on the part of the court.

6. Taking note of the principles enunciated in the above judgments of the Apex Court, the overall facts and circumstances of the case and also in

the interest of justice, especially taking note of the fact that at the time of filing the suit the Defendants started putting up construction and

subsequently it was completed, if the amendment of plaint is rejected, it would definitely cause great hardship to the Petitioner/Plaintiff and would

amount to multiplicity of proceedings. Therefore, this Court is of the view that

the impugned order passed in I.A. No. 1012 of 2008 in O.S. No. 1024 of 2006 on the file of the Principal District Munsif at Tiruchi, has to be set aside and accordingly set aside and the Civil Revision Petition is allowed. Consequently M.P. (MD) No. 1 of 2009 is closed. No costs.