
(2015) 09 MAD CK 0020

In the Madras High Court

Case No : C.R.P. (PD) No. 3517 of 2015 and M.P. No 1 of 2015

Managing Trustee, Neycer Educational Trust

APPELLANT

Vs

Vijaya Baskar

RESPONDENT

Date of Decision : 01-09-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, Order 6 Rule 7, Section 151

Citation : (2016) 2 MadWN(Civil) 83

Hon'ble Judges : D. Hariparanthaman, J.

Bench : Single Bench

Advocate : R. Karthikeyan, Advocate, for the Petitioners

Final Decision : Dismissed

Judgement

D. Hariparanthaman, J.—The Revision Petitioners are the First and Second Defendant in O.S. No. 196 of 2010 on the file of District Munsif Court, Cuddalore. The First and Second Respondents herein are the Plaintiffs in the said Suit.

2. The prayer in the Suit and other details are not relevant for deciding this Civil Revision Petition.

3. The Plaintiffs filed I. A. No 415 of 2015 in O.S. No. 196 of 2010 under 1 Order 6, Rule 17 and Section 151. C.P.C., to amend the Plan appended to the Plaint. According to the Plaintiffs, in the original Plan, the direction was not properly mentioned. In any Plan, the upper portion would indicate the North direction and lower portion would indicate the South direction. Such a procedure was not followed, i.e., there is a mistake in respect of directions in the Plan. Hence, the same was sought to be corrected in the Plan and amendment was not in respect of any pleadings or prayer.

4. In these circumstances, the Trial Court thought it fit to allow the Application. Though, it was seriously resisted by the Revision Petitioners slating that there was no due diligence on the part of the Plaintiffs in seeking amendment of the Plaint, the Trial Court, by an Order dated 1.7.2015 allowed the said Application in

I.A. No.415 of 2015 in O.S. No. 196 of 2010. Hence, the present Revision Petition.

5. The learned Counsel for the Revision Petitioners has strenuously contended that the Trial Court has committed grave error in allowing the Application when the Plaintiffs failed to show due diligence in making amendment to the Plan. According to them, since trial has already commenced and Witnesses were examined on the side of the Plaintiffs, the Trial Court should not have allowed the Application.

6. The proposition which the learned Counsel for the Revision Petitioners has advanced cannot be questioned. But the procedure prescribed in the Code of Civil Procedure cannot defeat the substantive justice. In this case, the Plaintiffs did not seek to amend the content of the Plaint or even the prayer. There was a mistake, particularly, in showing the direction in the Plan and the same was sought to be corrected. Of course, the Plaintiffs belatedly approached the Court for amendment of the Plaint. It is seen from the records that the same was pointed out even at the earliest point of time and also in the Report of the Advocate Commissioner. But the same could not preclude the Trial Court from permitting the amendment of the Plan in Order to meet the ends of justice.

7. The Trial Court has relied on the Judgment of the Apex Court reported in *Laxmidas v. Nanabhai*, AIR 1964 SC 11, wherein, the Apex Court has held that where no fresh allegations are added or fresh reliefs are not sought and the amendment is only by way of clarification in respect of existing pleadings, the said amendment has to be allowed, since the same would not cause any prejudice to the Respondents. In fact, it does not even require any Written Statement in this regard.

8. Before the Trial Court, the learned Counsel for the Revision Petitioners relied on the Judgment reported in *Ferani Hotels Pvt. Ltd. v. K. Raheja development Corporation*, 2014 (2) CTC 655 (SC) : 2014 (2) CCJD 29 SN, and the same was also pressed into service before this Court.

In the said case, relief of amendment was negatived on the ground that it was barred by limitation. Hence, I am of the view that the Trial Court is correct in distinguishing the said Judgment.

9. Like wise, the learned Counsel relied on another Judgment reported in *Shanmuga Nadar v. S. Kamala and others*, 2014 (3) LW 121. In that case, the amendment was sought to reduce the area of property. In the facts of the said case, amendment was negatived and the same was upheld. In the case on hand, as rightly held by the Trial Court, the amendment is nothing to do with the pleadings and it was only to correct the mistake in the Plan. Hence, do not find any infirmity in the Order passed by the Trial Court.

10. The learned Counsel for the Petitioners has submitted that the judgment rendered by the Supreme Court in 1964 could not have been relied on by the

Trial Court since the Judgment was rendered prior to the amendment made in 2002 to the Code of Civil Procedure. According to him Order 6, Rule 17 , was recast in the amendment to C.P.C, in the year 2002. I am not in agreement with the submission made by the learned Counsel for the Petitioners.

11. The principle enunciated in the Supreme Court Judgment in 1964 still holds good, as the Supreme Court held that the justice should be done and the procedure cannot defeat the substantive justice. Whenever no fresh negations are added and no fresh reliefs are sought for, such amendments could be allowed to be carried out and no technical view shall be taken in those matters.

12. For all the foregoing reasons, the Civil Revision Petition fails and accordingly, the same stands dismissed. No costs.