
(2007) 02 MAD CK 0295

In the Madras High Court

Case No : C.R.P.D. No. 1710 of 2006 and M.P. No. 1 of 2006

Meenakshi and Nanjappa

APPELLANT

Vs

Selvaraj @ Selvam and Others

RESPONDENT

Date of Decision : 19-02-2007

Acts Referred:

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

Citation : (2007) 210 ELT 670 : (2007) 5 STR 335

Hon'ble Judges : S. Ashok Kumar, J

Bench : Single Bench

Advocate : N. Manokaran, for the Appellant; No appearance, for the Respondent

Final Decision : Allowed

Judgement

S. Ashok Kumar, J.—This civil revision petition is filed against the order of the learned District Munsif Court, Tiruchengode in I.A. No. 1012 of 2006 in O.S. No. 243 of 1996 this Civil Revision Petition is filed.

2. The brief facts of the case are as follows:

The suit in O.S. No. 243 of 1996 was filed by the revision petitioners/plaintiffs for the relief of declaration and permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the suit property by the plaintiffs and awarding costs of the suit. Further, the petitioners filed I.A. No. 1012 of 2006 under Order VI Rule 17 and Section 151 of C.P.C. to grant leave to the petitioners to amend the plaint viz., measurement of the suit description on the basis of the report of the Advocate Commissioner, which was dismissed by the learned District Munsif, Tiruchengode on 04.09.2006, holding that if the proposed amendment is allowed, it will certainly cause prejudice to the respondents and the valuable right accrued on the respondents will be very much affected by limitation. Aggrieved over the order, this Civil Revision Petition is filed.

3. Learned Counsel for the revision petitioners submits that when there is a finding by the Commissioner that there is encroachment of the suit road,

naturally relief claimed has to be amended or otherwise, the purpose of filing suit itself is not served. Therefore, the order passed by the District Munsif, Tiruchengode has to be set aside and the amendment prayed for has to be allowed. In support of his contentions, he has cited a decision in the case of Rajesh Kumar Aggarwal and Ors. v. K.K. Modi and Ors. reported in 2006 2 L.W.776 wherein the Supreme Court has allowed the appeal filed against the order of the Appellate Court dismissing the application of the appellants for amendment of plaint on the ground that the proposed amendment introduces a totally different, new and inconsistent case.

4. The learned Counsel for the revision petitioners submitted that the trial court has failed to note that the amendment sought for in I.A. No. 1012 of 2005 is necessary for effective and complete adjudication of the disputes between the parties. While considering the amendment petition, the trial court ought not to have gone into the correctness of the case in the amendment and thereby the trial court has committed an error in rejecting the same.

5. In spite of notice, there is no representation for the respondents. Heard Mr. N. Manokaran, learned Counsel for the revision petitioners.

6. In fact the trial Court should not stand on technicalities and should have taken note of the fact that if the proposed amendment is not allowed, substantial justice cannot be done. In 2005 (3) CTC 321 (Rathinam @ Anna Samuthiram Ammal v. Syed Abdul Rahim) this Court held that the pleadings filed before 1.7.2002 will not be affected by the amended provisions of the Code.

7. In A.K. Gupta and Sons Vs. Damodar Valley Corporation, , it has been pointed out that where the amendment does not constitute the addition of a new cause of action or raise a different case, but amounts merely to a different or additional approach to the same facts, the amendment is to be allowed even after expiry of the statutory period of limitation. The Supreme Court further held that the object of the Courts and Rules of Procedures is to decide the rights of parties and not to punish them for their mistake.

8. In Ragu Thilak D. Joghna v. S. Rayappan and Ors. reported in 2001 (1) Supreme 328, the Apex Court held thus:

5. After referring to the judgments in Charan Das v. Amir Khan AIR 1921 PC 50 L.J. Leach and Company Ltd. Vs. Jardine Skinner and Co., ; Smt. Ganga Bai Vs. Vijay Kumar and Others, , Ganesh Trading Co. Vs. Moji Ram, , and various other authorities, this Court in B.K.N. Narayana Pillai Vs. P. Pillai and Another, , held:

The purpose and object of Order 6 Rule 17 CPC is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. The power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interests of justice on the basis of guidelines laid down by various High Courts and this Court. It is true that the amendment cannot be claimed as a matter of right and under all circumstances. But it is equally true

that the courts while deciding such prayers should not adopt hypertechnical approach. Liberal approach should be the general rule particularly in cases where the other side can be compensated with the costs. Technicalities of law should not be permitted to hamper the courts in the administration of justice between the parties. Amendments are allowed in the pleadings to avoid uncalled for multiplicity of litigation.

9. The above decisions squarely apply to the facts of the present case. This is a case where the petitioner could not have incorporated these pleadings before the commencement of the trial, since it is their case that only pending the suit when the Advocate Commissioner was appointed and filed his report and sketch, he came to know the exact measurement of the schedule of the suit property. As soon as they came to know about the same, immediately they preferred the Interlocutory Application and there is no delay. Further, as already stated, pleadings filed before 1.7.2002 will not be affected by the amended provisions of the Code. Moreover by amending the plaint, it will not change the character of the suit or it will introduce a new cause of action. Admittedly, the correct extent of the property and the resurvey proceedings came to the knowledge of the plaintiffs after appointment of Advocate Commissioner. It is also the well settled proposition of law that the very object of the amendment in the Code is to take note of the subsequent events and grant reliefs in order to obtain the ends of justice to shorten the litigation.

7. For the reasons stated above, this Civil Revision Petition is allowed. No costs. Consequently connected miscellaneous petition is closed.