
(2006) 11 MAD CK 0122

In the Madras High Court

Case No : C.R.P. (PD) (MD) No. 399 of 2004 and C.M.P. (MD) No. 2293 of 2004

Rajam

APPELLANT

Vs

Kunjukrishnan alias Chinthamony, Kumaresan and Vijaya

RESPONDENT

Date of Decision : 01-11-2006

Acts Referred:

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

Citation : (2007) 1 LW 983

Hon'ble Judges : K. Venkataraman, J

Bench : Single Bench

Advocate : K.N. Thampi, for the Appellant; D. Sadiq Raja, for Respondent-1 and J. Anandavalli, for R-2 and R-3, for the Respondent

Judgement

K. Venkataraman, J.—The present Civil Revision Petition is directed against the order of the learned Principal District Munsif, Kuzhithurai dated 26.2.2004 made in I.A. No. 295 of 2001 in O.S. No. 163 of 1997.

2. The petitioner has filed the suit in O.S. No. 163 of 1997 on the file of the District Munsif, Kuzhithurai praying for a decree declaring her title and possession over the suit property and consequently restraining the respondents herein from trespassing into the suit property and put up any construction thereon. The specific case in the plaint was that the suit property measuring 2 cents 875 sq.links comprising in Re-survey No. B3/238 of Vilavancode village and the building thereon in Door No. 16-15A of Kuzhithurai Municipality originally belonged to one Rajendran Nair and others. The said Rajendran Nair, who got this property under a partition deed, sold the same to the petitioner by sale deed dated 28.6.1995 and registered as document No. 1086. The case of the petitioner is that from the date of the said purchase, she is in possession and enjoyment of the same. Since the respondents, according to the petitioner, has tried to interfere with her possession and enjoyment of the suit property, she has filed the above referred suit for the prayer set out therein. The respondents filed the written statement as early as 25.6.1998 pointing out that the vendor of the

petitioner, namely, Rajendra Nair was having title only for 2.875 cents and the petitioner has purchased the said extent only. But, the description of boundaries on the eastern side has been wrongly stated with an illegal object of knocking away the respondents' property. Thus, according to the case of the respondents as put forth in their written statement, the petitioner/plaintiff is entitled to only 2.875 cents and the boundaries have been wrongly shown by including 1.875 cents, which the respondents have purchased.

3. While so, the petitioner has filed an application in I.A. No. 295 of 2001 in the month of April 2001 seeking for amendment of the plaint. The only reason stated in the affidavit filed in support of such application for amendment is that "at the time of drafting the plaint, certain slips are caused and the plaint has to be amended suitably." This is the only reason that has been stated by the petitioner in her affidavit, while such a plea was not taken out earlier. In paragraph (4) of the affidavit in support of the application for amendment, the petitioner has stated that under the partition deed, Rajendran Nair has obtained a particular extent and later after the death of his mother R.Saraswathy Amma, her property also devolved upon the said Rajendra Nair. Thus, the said Rajendra Nair got "A" and "B" schedule properties under the partition deed No. 3647 of 1972. Further, under sale deed No. 1153 of 1977, half a cent was purchased by the said Rajendran Nair, the vendor of the petitioner.

4. A counter has been filed by the respondents herein stating that when the suit was in the list on the earlier occasion, the petitioner has filed an application for impleading and managed to remove the suit from the list. Again when the matter was posted in the list after examination of P.W.1, the present application for amendment has been filed only to drag on the proceedings. The further case of the respondents in their counter is that the proposed amendment sought for will change the entire nature and character of the suit and hence the amendment cannot be allowed.

5. The learned Principal District Munsif, Kuzhithurai by his order dated 26.2.2004 dismissed the application filed by the petitioner for amendment under Order 6 Rule 17 C.P.C. While doing so, the learned Principal District Munsif, Kuzhithurai has held that by seeking excess area than the plaint schedule property, the petitioner wants to change the entire character of the suit.

6. I have heard Mr. K.N. Thampi, learned Counsel for the petitioner, Mr. D. Sadiq Raja, learned Counsel for the first respondent and Ms. J. Anandavalli, learned Counsel appearing for the respondents 2 and 3.

7. Mr. K.N. Thampi, learned Counsel appearing for the petitioner, has vehemently contended that the amendment sought for is only in respect of area, that is, to say instead of 2 cents 875 Sq.links, it should be 4 cents 750 Sq.links. According to the learned Counsel for the petitioner, the petitioner has purchased the property from Rajendran Nair, who in turn got the property by virtue of a partition deed and also a portion of the property through succession. According

to the learned Counsel, her mother K. Saraswathy Amma, who got a share in the said partition deed, died and her share also devolved on the petitioner. Further, according to the learned Counsel for the petitioner, half a cent was purchased by her vendor, the said Rajendran Nair and the said area was also purchased by the petitioner. Thus, according to the learned Counsel for the petitioner, in the plaint, instead of stating 4 cents 750 Sq.links, it has been wrongly shown as 2 cents 875 Sq.links.

8. Per contra, Ms. J. Anandavalli, learned Counsel appearing for the respondents 2 and 3 and Mr. D. Sadiq Raja, learned Counsel for the first respondent, have contended that it is not a simple case of seeking amendment of the area alone. The proposed amendment as set out in the application will clearly establish that the petitioner is trying to introduce a new set of facts which cannot be allowed. The learned Counsel for the respondents have drawn my attention to the entire records pertaining to the proposed amendment and submitted that the proposed amendment is not a simple amendment for adding an extra area.

9. I have perused the entire documents and records and also the arguments advanced on the side of both the parties. It is true that the petitioner is trying to drag on the proceedings by filing one application or other. As stated by the learned Counsel for the respondents, the suit was originally in the list on an earlier occasion and since the petitioner has filed an application for impleading, the suit was removed from the list. Again when the matter was posted in the list, the petitioner has come forward with the present application for amendment. It is to be noted that as early as 25.6.1998 written statement has been filed by the respondents pointing out that though the plaintiff is claiming an extent of 2.875 cents, the boundaries as mentioned in the schedule to the plaint will show that it is 2.875 plus 1.875 cents. In the said written statement, it has been clearly stated that 1.875 cents which has been formerly belonged to one Meenambika and others has been purchased by the respondents on 15.9.1995. Thus, it has been brought to notice by the respondents that the plaintiff, though claiming right over 2.875 cents, is trying to add another 1.875 cents by wrongly showing the boundaries in the schedule to the plaint. In spite of the same, the petitioner has not taken diligent steps in amending the plaint. If at all, the petitioner has purchased the entire extent of 4.750 cents from her vendor Rajendran Nair, the petitioner could have taken immediate steps by filing an application for amendment as soon as the filing of the written statement as early as 25.6.1998, but the petitioner has not chosen to do so.

10. Further, it has been seen that the petitioner wants to include more area alone by seeking amendment of the plaint. The amendment sought to be made as set out in the application for amendment will clearly establish that the petitioner not only wants to introduce more area, but also under the said guise, she is trying to introduce a new set of facts altogether. Furthermore, though it is the case of the petitioner that she has purchased 4.750 cents from her vendor in column "F" to the proposed amendment, the petitioner wants to have 10.375 cents. Thus, if it

is seen the application overall, the amendment that the petitioner is seeking will clearly establish that the petitioner is trying to introduce a new cause of action altogether.

11. The learned Counsel for the petitioner has brought to the notice of this Court the decision reported in 2001 (2) M.L.J. 769 (Selvaraj v. Chennasamy Gounder) which reads as follows:

Order 6 Rule 17 of CPC would clearly provide that in the absence of injustice to the other party, the amendment can be permitted for determination of the real question in controversy between the parties. The words "at any stage of the proceedings" as contained in Order 6 Rule 17 C.P.C. would make it clear that the proposed amendment, even if belated, may be allowed, if it can be made without injustice to the other side.

By citing the said decision, the learned Counsel for the petitioner has stated that the application for amendment has to be considered liberally. Even in the said decision, it has been clearly stated that the amendment can be allowed if it can be made without injustice to the other party. Further, in the said judgment, it has been clearly stated that the prayer for amendment cannot be allowed where by the amendment, there will be total transformation of the nature of litigation.

12. The next decision cited by the learned Counsel for the petitioner in support of his contention is Palaniammal v. V.K. Ramanathan 2002 (1) C.T.C. 618 wherein it has been held as follows:

Power to allow amendment is wide and require liberal approach particularly when the other side can be compensated with costs.

But, the same judgment also says that the party cannot be allowed to set up new case or new cause of action. Thus, when new set of facts is sought to be introduced, amendment cannot be allowed.

13. Yet another judgment cited by the learned Counsel for the petitioner is reported in 2006 (4) L.W. 136 (Sengottuvel and Anr. v. Ponnuvel) wherein this Court held as under:

All amendments can be allowed for the purpose of determining the real question in controversy between the parties to do substantial justice. Amendment sought to be introduced are in line with the existing pleadings and they do not introduce a new case or a cause of action with respect to suit property.

Even in the said judgment, it has been clearly stated that by way of amendment, which is sought to introduce a new case or a cause of action, cannot be permitted.

14. Yet another judgment cited by the learned Counsel for the petitioner is Baldev Singh and Others Etc. Vs. Manohar Singh and Another Etc., wherein it has been held as follows:

Under Order 6 Rule 17 C.P.C., wide power and unfettered discretion has been conferred on the court to allow amendment of the pleadings to a party in such manner and on such terms as it appears to the court just and proper.

Even in the said judgment, it has been clearly stated as under:

An amendment of a plaint and amendment of a written statement are not necessarily governed by exactly the same principle. It is true that some general principles are certainly common to both, but the rules that the plaintiff cannot be allowed to amend his pleadings so as to alter materially or substitute his cause of action or the nature of his claim has necessarily no counterpart in the law relating to amendment of the written statement. Adding a new ground of defence or substituting or altering a defence does not raise the same problem as adding, altering or substituting a new cause of action. Accordingly, in the case of amendment of written statement, the courts are inclined to be more liberal in allowing amendment of the written statement than of plaint and question of prejudice is less likely to operate with same rigour in the former than in the latter case.

15. Thus, the overall proposition of law laid down by this Court as well as the Apex Court is that there shall be liberal approach in considering the application under Order 6 Rule 17 C.P.C. At the same time, it has been clearly stated that the pleadings can be allowed to be amended if it is to substantiate, elucidate and explain the pre-existing facts already contained in the original pleadings. If a new case or a new cause of action is sought to be introduced, it cannot be allowed. Further, the principle that has to be borne in mind while allowing the application for amendment is that no serious prejudice will be caused to the opposite party if the application for amendment is allowed. Further, if the amendment of pleadings sought to alter materially or substitute a new case or a new cause of action, it cannot be entertained.

16. Thus, considering the entire aspects of the matter, the entire amendment sought for by the petitioner cannot be granted. But, at the same time, the petitioner can be permitted to incorporate the larger extent of 4,750 cents in the plaint instead of 2 cents 875 sq.links, since the said amendment will not alter the structure of the suit. Further the petitioner has given full boundary in respect of entire 4.750 cents. The petitioner can also be permitted to amend the plaint by adding para 2-A after para 2 as set out in the petition for amendment. By allowing this amendment, it should not be taken that as though this Court has accepted the plea of the petitioner that she has purchased 4.750 cents from her vendor. This fact has to be established by the petitioner by adducing acceptable oral and documentary evidence. Further, the petitioner can be permitted to pay court-fee for the excess area, which the petitioner is claiming and she will be permitted to make such amendment in the prayer for valuation of court-fee. Beyond that, the petitioner is not entitled for any other amendment which she has sought for in her application for amendment in I.A. No. 295 of 2001.

17. Thus, the order of the learned Principal District Munsif, Kuzhithurai dated 26.2.2004 made in I.A. No. 295 of 2001 in O.S. No. 163 of 1997 is modified to the extent as indicated above. The Civil Revision Petition is disposed of accordingly. Consequently, C.M.P.(MD) No. 2293 of 2004 is closed. However, there is no order as to costs.