
(2007) 07 MAD CK 0102

In the Madras High Court

Case No : Civil Revision Petition PD (MD) No. 838 of 2005 and C.M.P. (MD) No. 6471 of 2005

Ramasamy Udayar and Others

APPELLANT

Vs

Prakasam alias Sathiaselvan

RESPONDENT

Date of Decision : 11-07-2007

Acts Referred:

Citation : (2007) 07 MAD CK 0102

Hon'ble Judges : S. Nagamuthu, J

Bench : Single Bench

Advocate : S.K. Mani, for the Appellant; R. Sundar, for the Respondent

Final Decision : Dismissed

Judgement

S. Nagamuthu, J.—The petitioners who are the defendants in O.S. No. 338 of 1997, challenge the order dated 29.06.2005 made in I.A.

No. 890 of 2004, on the file of the learned I Additional Subordinate Judge, Tiruchirapalli. The respondent is the plaintiff.

2. The above suit was filed by the respondent in the year 1997, when he was a minor represented by his mother Chandra, for partition. The

plaintiff's father was one Muthukrishnan and his paternal grand father was one Ramasamy Udayar. The defendants 1 and 2 are the parents of

Muthukrishnan and the third defendant is the first wife of Muthukrishnan and the other defendants are the issues of Muthukrishnan through the third

defendant. The plaintiff is the son through the second wife of Muthukrishnan.

3. Originally, when the suit was filed, all the items of suit properties were described to be that of ancestral properties of Ramasamy Udayar and

partition was claimed on that basis. During the trial, after the examination of the

first defendant as D.W.1, the respondent/plaintiff has filed I.A. No.

890 of 2004, for amendment of the plaint. It was resisted by the petitioners/defendants. The learned I Additional Subordinate Judge, has allowed

the said I.A. Challenging the said order, this revision has been filed.

4. The contentions of the learned Counsel for the petitioners is that though originally the suit was laid for partition on the footing that all the suit

properties are ancestral properties of Ramasamy Udayar, now the amendment which is sought to be made is with reference to the 5 Items of

properties viz., Item Nos. 43 to 47 to the effect that they are the self-acquired properties of Muthukrishnan. According to the learned Counsel, it

would change the character of the claim and the very nature of the suit and therefore, the lower Court should not have allowed the amendment.

5. Per contra, the learned Counsel for the respondent would submit that at the time when the suit was filed, the plaintiff was a minor and also his

illiterate mother has filed the suit on his behalf. Since he was a minor, he had no occasion to go-through the plaint to find out whether the claim has

been made correctly or not. The learned Counsel would further submit that after attaining majority, that too after the examination of D.W.1, when

he enquired he came to know that these 5 items of suit properties are self-acquired properties of his father and therefore, immediately the above

I.A was filed and thus, neither there is any delay nor any attempt made to change the character of the claim or the nature of the suit.

6. I have considered the rival contentions.

7. Admittedly, the suit was filed for partition by the minor respondent represented by his mother in the year 1972. Therefore, one cannot expect

the minor to know about the details of the suit until he attains majority. There is no dispute that around the year of 2004, he attained majority and

thereafter, he was declared as major in the suit and he started proceeding with the trial of the suit on his own. He now claims that his enquiries have

revealed that these 5 items of the properties are the self-acquired properties of his father and not ancestral properties of Ramasamy Udayar and

thereafter, without any delay, in the same year, he filed the said I.A., for amendment of the plaint.

8. Having regard to the fact that the respondent was a minor till the year 2004 and after attaining majority, he has immediately filed the said I.A. I

am of the opinion that the delay in filing the application is immaterial.

9. Regarding the contention that the amendment sought to be made will change the very character of the claim and the nature of the suit, I am of the

considered opinion that it is not so. It is a fact to be ascertained by the Court whether the properties are self-acquired properties or ancestral

properties. No party shall be allowed to either gain or to lose his right simply because there is a small mistake in making a claim on a hyper

technical ground. In this case, since it is stated that the plaintiff was a minor at the time of filing of the suit, as rightly contended by the learned

Counsel, one cannot expect him to know the details of the plaint. He can be expected to know about the correctness or otherwise of the plaint

only after he attaining majority and in the instant case, he has done so promptly. So, when he comes to know about the particular fact, it is

absolutely necessary to incorporate the same in the plaint. In those circumstances, it is not so material whether there is a change in the nature of the

claim or not. Whatever be the case, by allowing the respondent to amend the suit, as prayed for in the said I.A., the petitioners are not at all going

to be prejudiced in any manner. After all, the Court is going to give a finding on evidence, whether these properties are self-acquired properties or

ancestral properties of Muthukrishnan. Therefore, I am of the considered view there is nothing wrong in allowing the amendment.

10. The learned Counsel for the petitioners would further submit that the plaintiff after attaining majority has gone to the box and deposed as

witness. During examination, he has admitted that these 5 items are ancestral properties. On the basis of the said admission, the learned Counsel

for the petitioners would submit that when there is such an admission, if amendment is allowed to be made, it would deprive the other party to have

the benefit of the said admission and so amendment should not be allowed. The learned Counsel relies on the Judgment of the Hon'ble Supreme

Court of India reported in Heeralal Vs. Kalyan Mal and Others, . The principles laid down in the judgment are not applicable to the facts of the

present case. In that case, the admission was made by way of pleading by the party who wanted to amend the plaint to substitute the said

admission by means of some other pleading. Therefore, the Hon'ble Supreme Court was of the view, that if the amendment is so allowed then the

admission made in the plaint is once for all given up and the party is deprived of having the benefit of such admission. Virtually, in that case, it is

substitution of a new prayer by means of amendment. But, in the case on hand, the admission is not in the pleading, but the same is by way of

evidence. If the plaintiff is allowed to amend the plaint, the admission said to have been made in the evidence does not get erased and the benefit

arising out of the said admission is also not deprived of. Even after the amendment of the plaint, the admission made by way of evidence is always

available for the petitioners to use the same in their favour either to prove a particular fact or to disprove the same. Therefore, I am of the

considered view that the legal principle laid down by the Hon''ble Supreme Court in the Judgment relied on by the learned Counsel for the

petitioners does not apply to the facts of the present case.

11. In the result, the order passed by the learned I Additional Subordinate Judge, Tiruchirapalli dated 29.06.2004 made in I.A. No. 890 of 2004

in O.S. No. 338 of 1997 is confirmed. I do not find any merit in the revision. Revision fails and the same is dismissed. It is made clear that after the

amendment is made, the defendants should be allowed to file additional written statement, if any, and both the parties should be allowed to let in

further evidence. No costs. Consequently, connected C.M.P is closed.