
(2001) 04 MAD CK 0009
In the Madras High Court
Case No : C.R.P. No. 3086 of 2000

Selvarj, Poongavanam Ammal, Tamil Selvi	APPELLANT
Vs	
Chennasamy Gounder	RESPONDENT

Date of Decision : 04-04-2001

Acts Referred:

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

Citation : (2001) 04 MAD CK 0009

Hon'ble Judges : M. Karpagavinayagam, J

Bench : Single Bench

Advocate : P. Peppin Fernando, for the Appellant; P.B. Ramanujam, for the Respondent

Final Decision : Dismissed

Judgement

M. Karpagavinayagam, J.—The petitioners are the defendants and the respondent is the plaintiff (In the cause title in this Civil Revision

Petition, the petitioners have been wrongly named as plaintiffs and the respondent has been named as defendant). The respondent/plaintiff filed a

suit for declaration of title to the suit properties as against the petitioner/defendants.

2. The second petitioner/second defendant filed a written statement claiming that the suit properties were given to her by her grand father by way

of settlement deed. Her grand father Krishna Gounder settled the property, which is admittedly ancestral, by execution of a settlement deed. At the

time of execution of the said settlement deed, his first wife's son was alive. Since the settlement deed was executed during the life time of male

member, the deed is void.

3. In the above situation, the respondent/plaintiff filed an application under

Order 6, Rule 17, C.P.C. to permit the respondent/plaintiff to amend the plaint with reference to the above plea. The said petition was contested by the petitioners/defendants on the ground that the settlement deed is valid and the application to amend the plaint was filed in order to drag on the proceedings and hence, the application for amendment of the plaint was liable to be dismissed.

4. On the basis of the above pleas, the trial Court considered the submissions made by the counsel for the parties and found that the said application was sustainable both in law and on facts and allowed the said application permitting for the amendment. The said order is under challenge before this Court in this Civil Revision Petition filed by the defendants.

5. Mr. Peppin Fernando, the learned counsel for the petitioners, while attacking the impugned order, would cite the following decisions:-

- (1) Heeralal v. Kalyan Mal and others (1998-1-L.W.340 = 1998 (1) S.C.C. 278);
- (2) Gurusamy Gounder v. Muthusamy Gounder and another (1999-3-L.W.885); and
- (3) Chinnapillai and others v. Angappa Udayar (2000-3- L.W.818);

and would contend that the belated application filed under Order 6, Rule 17, C.P.C. for amendment of the plaint would not be entertained.

6. On the other hand, Mr. P.B. Ramanujam, the learned counsel for the respondent, in justification of the impugned order, would submit that the reasonings given in the impugned order are perfectly valid and as such, the Civil Revision Petition is liable to be dismissed.

7. There is no dispute in the fact that the respondent filed a suit for declaration of title over the suit properties and that while filing the written statement, the second defendant claimed that the said properties were given to her by her grand father through a settlement deed dated 22.8.1930.

8. Under those circumstances, the main issue would be as to whether the respondent/plaintiff would be entitled to the decree as prayed for, in the light of the settlement deed executed by late Krishna Gounder in favour of the second defendant on 22.8.1930.

9. According to the respondent/ plaintiff, even in the settlement deed, it was admitted that the said settlement deed was executed during the life time of a male legal heir through his first wife and under those circumstances, the said settlement is void and therefore, the plaint is sought to be

amended by incorporating the above plea.

10. The decisions cited by the learned counsel for the petitioners, as referred to above, would not apply to the facts of the present case, since all

the decisions would hold that the amendment of the plaint cannot be allowed, when the plaintiff raising inconsistent plea, which would likely to

cause prejudice to the defendant.

11. But, in the instant case, the adding of some more factual details to substantiate the plea in the suit seeking for declaration of title over the suit

properties would not be construed to be an inconsistent plea.

12. Moreover, in the counter filed before the trial Court, it was never stated that the said application for amendment is ill-motivated and the new

inconsistent plea has been raised so as to cause injustice or prejudice to the defendants.

13. The only ground urged by the learned counsel for the petitioners/defendants is that after examination of P.W.1, the said application had been

filed belatedly.

14. On going through the impugned order, it is clear that the plea sought to be added in the suit is not an inconsistent one and therefore, the

application for amendment under Order 6, Rule 17, C.P.C. is perfectly justifiable.

15. Order 6, Rule, 17 C.P.C. would provides thus:-

Amendment of pleadings. -- The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and

on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in

controversy between the parties.

16. The above rule 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.

17. Furthermore, the prayer for amendment can be allowed where by the amendment, multiplicity of suits would be avoided. The prayer for

amendment cannot be allowed where by the amendment, there will be total

transformation of the nature of the litigation. In other words, the pleading can be amended if it is to substantiate, elucidate and expand the pre-existing facts already contained in the original pleadings.

18. In the light of the above guidelines given by the Supreme Court and this Court, it is clear that by permitting the amendment sought for by the plaintiff, the real question in controversy that may arise in the suit would be determined. Therefore, I do not find any merit in this petition and accordingly, the Civil Revision Petition is dismissed. Consequently, C.M.P. No. 3086 of 2000 stands dismissed.