
(2004) 01 MAD CK 0012

In the Madras High Court

Case No : Civil Revision Petition No. 412 of 2003

Sengodan and Nallammal

APPELLANT

Vs

Sengodan, Sakthivel and Valliyammal

RESPONDENT

Date of Decision : 22-01-2004

Acts Referred:

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

Citation : (2004) 2 LW 220

Hon'ble Judges : K. Gnanaprakasam, J

Bench : Single Bench

Advocate : P. Jagadeesan, for the Appellant; T.T. Ravichandran, for the Respondent

Final Decision : Allowed

Judgement

K. Gnanaprakasam, J.—The revision petitioner is the defendant, who has filed an application in I.A. No. 1353 of 2002 in O.S. No. 197 of

1993 on the file of the District Munsif Court, Tiruchengode, to amend the pleadings and the same came to be dismissed. Aggrieved by the same,

the defendant preferred this Civil Revision Petition.

2. It is the case of the revision petitioner that in the suit filed by him, the suit Survey No. was given as 58/1 in respect of the punja land and Survey

No. 53 is given in respect of the vacant land situated in Tiruchengode Municipal limits, Ward No. 5; that in the affidavit filed in support of the

petition, the petitioner stated that he had already filed a suit in O.S. No. 411 of 1995 for the relief of permanent injunction and after filing of the

suit, the Government Officials inspected the suit property and granted patta to the first petitioner and in the said patta, new T.S. No. 77 was

assigned to the properties belong to the petitioner, which forms part of suit

property and he had already filed an application in I.A. No. 1320 of

2002, in which he could not give the correct T.S. Number and he had already filed a memo not pressing the said I.A. No. 1320 of 2002.

Subsequent to the same, the petitioner filed the present I.A. No. 1353 of 2002 to amend the Survey No. in the plant, in view of the Government

has given the said T.S. No. 77 in the patta issued to the petitioner.

3. The said petition was resisted by the respondent/defendant on the ground that the petitioners are not entitled to amend the plaint and if the

amendment is allowed, it would alter the nature of the suit itself.

4. Heard the learned Advocate for the petitioner/respondent. The learned Advocate for the petitioner would submit that the amendment sought for

have arisen only due to Survey No. furnished by the Government when they issued the patta and by substituting or changing the Survey No., the

petitioners have not changed the boundaries nor they put forward any new claim. Except the Survey No. sought to be changed, the cause of

action, the facts and the boundaries of the suit property left unaltered. It is submitted that he could not furnish the correct survey No. previously, as

the new Survey number came to be given only after the commencement of the trial and by allowing such amendment, no prejudice would be

caused to the respondent.

5. The learned counsel for the petitioner relied upon the case reported in Ragu Thilak D. John Vs. S. Rayappan and Others, , wherein the

Honourable Supreme Court after considering several decisions and held as follows:-

The question of amendment falling under Order 6 Rule 17 C.P.C., 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.

6. The learned counsel for the petitioner also relied on PALANIAMMAL Vs. V.K. RAMANATHAN AND 4 OTHERS 2002 (1) CTC 618, the

learned Judge of this Court (A.S. VENKATACHALAMOORTHY. J) had considered the scope of amendment and enunciated the following principles.

1. The power to allow amendment is wide and hence the Court should not adopt hyper technical approach but on the other hand liberal approach

should be the general rule particularly in cases where the other side can be compensated with costs.

2. The general rule is that the party is not allowed to set up new case or new cause of action.

3. Technicalities of law should not be permitted to hamper the administration of justice between the parties and amendments are allowed in the

pleadings to avoid multiplicity of litigation.

4. Courts cannot go into the truth or falsity of the proposed amendments sought for at the time of considering the application for amendment.

5. All amendments of the pleadings should be allowed which are necessary for determination of the real controversies in the suit provided the

proposed amendment does not alter or substitute a new cause of action on the basis of which the original lis was raised or defence taken.

6. All reliefs ancillary to main relief and reliefs which are in the nature of additional reliefs should be allowed as general rule.

7. Even if a party or its counsel is inefficient in setting out its case initially the shortcoming can certainly be removed but however, the party who is

put to inconvenience should be suitably paid. The Court has to only see that the error is not incapable of being rectified so long as remedial steps

do not unjustifiably injure rights accrued.

8. The delay in filing petition for amendment should be properly compensated by cost and error or mistake, if not fraudulent, should not be made a

ground for rejecting the application for amendment of plaint or statement.

7. The petitioner also relied upon SAMPATH KUMAR Vs. AYYAKANNU AND ANOTHER 2002 (4) CTC 189, wherein the Supreme Court

has held that ""if basic structure of the suit was not altered by proposed amendment, the amendment should be allowed"".

8. On the other hand, the learned counsel for the respondent relied upon the case of SHIV SHAKTI CO-OPERATIVE HOUSING SOCIETY,

NAGPUR Vs. M/S. SWARAJ DEVELOPERS AND OTHERS (2003) 2 M.L.J. 170 (S.C.), wherein the Supreme Court has held that

A plain reading of Section 115 as it stands makes it clear that the stress is on the question whether the order in favour of the party applying for

revision would have given finality to suit or other proceedings. If the answer is "yes" then the revision is maintainable. But on the contrary, if the

answer is "no" then the revision is not maintainable. Therefore, if the impugned order is of interim in nature, cannot be the subject matter of revision

under Sec. 115. There is marked distinction, in language of Sec. 97 (3) of the old Amendment Act and Se. 32 (2) (i) of the Amendment Act.

While in the former, there was clear legislative intent to save applications admitted or pending before the amendment came into force. Such an

intent is significantly absent in Sec. 32 (2) (i). The amendment relates to procedures. No person has a vested right in a course of procedure. He

has only the right of proceeding in the manner prescribes. If by a statutory change the mode of procedure is altered the parties are to proceed

according to the altered mode, without exception, unless there is a different stipulation.

9. The argument advanced on either side and the rulings have also been considered by me. The case relied upon by the respondent in SHIV

SHAKTI CO-OPERATIVE HOUSING SOCIETY, NAGPUR Vs. SWARAJ DEVELOPERS AND OTHERS (2003) 2 M.L.J. 170 (S.C.), is

completely stand on a different footing wherein, the Supreme Court has held when Section 115 C.P.C., could be invoked. It is stated that if the

impugned order is of interim nature, the revision will not be maintainable and that is not the case in our hand.

10. The learned counsel for the respondent has submitted that in view of the amendment made to Order 6 Rule 17 by the amendment Act

22/2002, which came into force on 1/7/2002, states that

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite

of due diligence, the party could not have raised the matter before the commencement of trial"".

11. Admittedly, the trial has commenced in this case. The petitioner in para 2 of the affidavit filed in support of the petition has clearly stated that

after examination of P.W.1 in part, patta came to be issued by the Government in favour of the petitioner in which the patta No. is shown as 77

and only in such circumstances, he was constrained to file this petition and of course, he has filed I.A. No. 1320 of 2002 for amendment, in which

by mistake and oversight, the new Survey No. was not given and therefore, he has filed a memo to withdraw the same. The reasons set forth in the

affidavit are sufficient. Compliance of the Provisio to Order 6 Rule 17 and the argument advanced on behalf of the respondents cannot be

countenanced.

12. The decision rendered by this Court in PALANIAMMAL Vs. V.K. RAMANATHAN AND 4 OTHERS 2002 (1) CTC 618 and

SAMPATH KUMAR Vs. AYYAKANNU AND ANOTHER 2002 (4) CTC 189, make the position very clear that in considering the

application under Order 6 Rule 17, the Court should not adopt hypertechnical approach. It is further stated that liberal approach, particularly in

cases where the other side can be compensated with costs. It is therefore, made clear that allowing of the application is a rule and rejection is an

exception. As such I come to the conclusion that there may not be any impediment in allowing this application.

13. The guidelines for considering the amendment application as stated in PALANIAMMAL Vs. V.K.RAMANATHAN AND 4 OTHERS 2002

(1) CTC 618, also favours the amendment in favour of the petitioner and the amendment sought for the petitioner is not intending to set up a new

case or new cause of action, if the amendment is allowed in the pleadings, it will avoid multiplicity of litigation. Further, the amendment sought for is

very much necessary for determination of true controversies in the suit. In those circumstances, I prefer to accept the decision rendered in

PALANIAMMAL Vs. V.K.RAMANATHAN AND 4 OTHERS 2002 (1) CTC 618, and and SAMPATH KUMAR Vs. AYYAKANNU

AND ANOTHER 2002 (4) CTC 189, and come to the conclusion that amendment sought for is permissible and the trial Court has erred in

dismissing the petition.

14. In the result, the CRP is allowed. No costs. The respondent/defendant is permitted to file an additional written statement within two weeks

from the date of receipt of a copy of this order. By taking into consideration that the suit is of the year 1993, the trial Court is directed to dispose

of the suit as expeditiously as possible, as both the petitioner and the respondents have agreed to cooperate with the trial of the suit.