

**(2001) 02 MAD CK 0144**

**In the Madras High Court**

**Case No :** C.R.P. No. 1582 of 1997 and C.M.P. No. 8068 of 1997

Thirupathi Nadar, Paul Raj, Ramanathan and Krishna Ram

APPELLANT

Vs

Pakiyalakshmi and Others

RESPONDENT

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**Date of Decision :** 22-02-2001

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, Order 9 Rule 7, 115

**Citation :** (2001) 02 MAD CK 0144

**Hon'ble Judges :** E. Padmanabhan, J

**Bench :** Single Bench

**Advocate :** T. Easwarathas, for the Appellant;

**Final Decision :** Dismissed

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## **Judgement**

E. Padmanabhan, J.—This revision has been preferred being aggrieved by the fair and decretal order dated 9-7-1996 made in I.A.No.828 of 1996 in O.S.No.384 of 1991 on the file of the principal District Munsif Court at Ambasamudram. By the said order the Court below dismissed the application taken out by the petitioner herein for amendment of the written statement under Order 6, Rule 17, of the Code of Civil Procedure. This Court ordered Notice of Motion on 20-6-1997 and since then it is pending at the stage of Notice of Motion. The respondents are yet to be served. The petitioners also had not chosen to serve the respondents 1 to 5. However, this Court with the consent of counsel for the petitioners took the revision itself for final disposal.

2. Heard Mr. T. Easwaradhas, learned counsel appearing for the petitioners.

3. The respondents herein instituted the suit O.S.No.384, of 1991 on the file of the District Munsif Court, Ambasamudram seeking for the following relief's:-

a) of permanent injunction to restrain the defendants, their agents and servants from in any manner interfering with the plaintiffs peaceful possession and enjoyment of the 1st schedule property:

b) for a mandatory injunction to put up the compound wall along BI CI which had been demolished by the defendants to a length of 27 feet and one foot width and to a height of 6 feet with brick and mortar by the defendants failing which to have the same done by Court at defendant's cost: and

c) to pass a decree of permanent injunction to restrain the defendants from in any manner preventing the plaintiff from using the pathway 2nd schedule:

4. Along with the said suit the plaintiffs filed a detailed plan even during the year 1991. The trial Court framed appropriate issues and the suit came to be added in the special list for final disposal. The plaintiff examined his witnesses and also marked exhibits. When the first defendant was being cross examined, a specific question was put to him about the plea set out in para 3 of the written statement wherein the defendants have not only admitted that the plaintiff is entitled to A; B; C; D portion, but the defendant had also pleaded that in truth the defendant is entitled to A,B,E,D portion as well.

5. At the stage of cross examination, the defendants took out I.A. No. 328 of 1996 to delete substantial portion of para 3 of the written statement. The defendants applied for the amendment of the written statement which reads thus:-

6. This amendment application filed by the defendants was resisted by the plaintiffs by filing detailed objections. The Court below by fair and decretal order dated 9th July 1996 dismissed the application as such an application is not only belated., but it would change the nature of the suit, and the application has been taken out with an intention to drag on the proceedings. It was also pointed out that by such amendment, the very plea put forward by the defendant is sought to be altered and that it would cause serious prejudice. In that view of the matter the Court below rejected the application. Being aggrieved, the present revision petition has been preferred.

7. The learned counsel for the petitioners contended that. at any time amendment of the pleadings could be applied for and entertained and an amendment cannot be rejected as belated. The learned counsel further contended that the contents of para 3 of the written statement or portion of para 3 of the written statement have been explained in the very same para, however the material portion has to be deleted as the defendant had set out such a plea either by inadvertence or by mistake. In effect substantial contents in para 3 is admission of the plaintiffs suit claim and the remaining portion of paragraph 3 is the explanation, which the defendant had added to the said admission. The revision petitioners had in fact admitted in para 3 which the petitioners sought to get over by filing the application for amendment of the written statement.

8. The learned counsel for the petitioners relied upon the pronouncement of the Apex Court in Panchdeo Narain Srivastava Vs. Km. Jyoti Sahay and Another, in support of his contention that the admission made by a party may be withdrawn or may be explained away and therefore it cannot be said that by Amendment an

admission of fact cannot be withdrawn. The learned counsel for the petitioners also relied upon the decision of the Allahabad High Court in *Om Rice Mill and Others Vs. Banaras State Bank Ltd. and Another*, where D.K. Sethi, J speaking for himself held that Order 6 Rule 17 permits amendment at any stage of the proceedings as may be necessary for the purpose of determining the real question in controversy between the parties and the expression at any stage of the proceedings is far more elastic than the stage contemplated in order 9 Rule 7 which specifies in no uncertain terms as to at what stage it will be attracted. It has been held therein that without imposing any kind of limitation, if it is necessary for the purpose of determining the real question in controversy then it can be allowed before, or at or after the trial or even after judgment or in appeal.

9. The learned counsel for the petitioners also relied upon the judgment of Pitchakaran @ Balakrishnan Vs. Parvathi Ammal, where the learned Judge held that amendment shall not be disallowed on the ground that there is delay in taking out the application for amendment. The learned counsel also relied upon a Division Bench Judgment of this Court in *TTK Pharma Ltd., v. A.G. Robaparam*, reported in 1998 (II) CTC 108, where the Division Bench held that if there is mistake in description of specified goods, such mistake can be corrected by seeking amendment of pleading as it does not change the cause of action or nature of suit. The learned counsel also relied upon the decision of P. Sathasivam, J., in *Muthammal v. Thamburati* reported in 1997 (II) CTC 12 = 1997-11-L.W.261, therein it has been held that rule of procedure is meant for not to punish the parties for their mistakes and amendment could be allowed even after four and half years from the knowledge.

10. The learned counsel for the petitioners also relied upon the decision of the Apex Court in *Akshaya Restaurant Vs. P. Anjanappa and Another*, where their Lordships of the Supreme Court held that even the admission can be explained and even inconsistent pleas could be taken in the pleading. With respect to the above proposition of law laid in the above pronouncements there could be no quarrel. But how far these pronouncements are applicable to the facts of this case is the only consideration that arises in this revision. This Court held's that all these pronouncements relied upon by the learned counsel for the petitioners has no application to the facts of this case and they are clearly distinguishable on facts. It is to be pointed out that the Apex Court in *Modi Spinning and Weaving Mills Co. Ltd. and Another Vs. Ladha Ram and Co.*, held that the amendment seeking to displace the plaintiff completely from admissions made by defendants in written statement should not be allowed. In this connection it has been held thus:-

8. The High Court on revision affirmed the judgment of the trial Court and said that by means of amendment the defendants wanted to introduce an entirely different case and if such amendments were permitted it would prejudice the other side.

9. The decision of the trial Court is correct. The defendants cannot be allowed to

change completely the case made in paragraphs 25 and 26 of the written statement and substitute an entirely different and new case.

10. It is true that inconsistent pleas can be made in pleadings but the effect of substitution of paragraph 25 and 26 is not making inconsistent and alternative pleadings but it is a seeking to displace the plaintiff completely from the admissions made by the defendants in the written statement. If such amendments are allowed the plaintiff will be irretrievably prejudiced by being denied the opportunity of extracting the admission from the defendants. The High Court rightly rejected the application for amendment and agreed with the trial Court.

11. Even the later decision relied upon by the counsel for the petitioners viz., Panchdeo Narain Srivastava Vs. Km. Jyoti Sahay and Another, , their Lordships held that an admission by a party may be withdrawn or may be explained away. But on that score it cannot be said that by amendment or admission of fact such an admission cannot be withdrawn. Their Lordships held in that judgment that the admission can allowed to be withdrawn provided it is necessary to effectively adjudicate upon the dispute between the parties. In the present case the amendment sought for is not necessary to effectively adjudicate upon the dispute between the parties and the said pronouncements will have no application to the facts of the present case.

12. On the pleadings, the entire facts are known to the defendants/petitioners and it was even to their knowledge, yet, they did not move an application for nearly six years after filing of their written statement. It is true that amendment should not be refused on technical grounds and it is the discretion of the Court before which such an application for amendment comes up. It is equally well settled that rules of procedure are handmaid to the administration of justice and a party should verily be refused of his relief merely because, some negligence or even infraction of the rules of procedure is pointed out. Even if the proposed amendment is belated, it may very well be allowed if it could be made without prejudice to the other side. However, on facts of this case, this Court holds that the defendants should not be allowed by means of amendment to set up a new cause of action particularly when the new cause of action alters the character of the suit. As held by the Court below, the petitioners/defendants were very much aware of the admission made by them which had been on record for several years and the present application was moved with a design or ulterior motive as has been held by the Court below and therefore it cannot be allowed.

13. The object of Order 6 Rule 17 of the CPC is that the Court should get at the points in controversy and try the merits of the case that comes before it and normally all applications for amendments for determining the real question in controversy may be allowed. The Court as a general rule or should always be more liberal in allowing application for amendment to the written statement. In the present case, the plaintiffs evidence is over and the suit is posted for evidence of the defendants and at that stage when the defendant being cross

examined, the defendants had come out with the application for amendment of the written statement as detailed above. As seen from the original pleas set out in the written statement, the defendant had fairly admitted not only the suit claim but also set out explanation to the said admission. It is not as if such an admission had been made out of misconception of facts or by inadvertence or due to oversight. The very fact that the defendants had not only set out the admission in para 3, but also had chosen to explain the said admission in the very same paragraph. That being a factual position, the defendants cannot be allowed to amend the written statement as the same would not only prejudice the plaintiffs but also it would be in violation of the pronouncement of the Apex Court. The amendment in the present case will introduce a new case as has been pointed out by the trial Court and virtually it would change the nature and character of the case which is not permissible.

14. In B.K.N. Narayana Pillai Vs. P. Pillai and Another, the Apex Court held thus:-

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. In consistent and contradictory allegations in negation to the admitted position of facts or mutually destructive allegations of facts should not be allowed to be incorporated by means of amendment, to the pleadings. Proposed amendment should not cause such prejudice to the other side which cannot be compensated by costs. No amendment should be allowed which amounts to or results in defeating a legal right accruing to the opposite party on account of lapse of time.

15. In Heeralal Vs. Kalyan Mal and Others, the Apex Court while considering an identical situation, held thus;- Once the written statement contains an admission in favour of the plaintiff, by amendment such admission of the defendants cannot be allowed to be withdrawn if such withdrawal would amount to totally displacing the case of the plaintiff and which would cause him irretrievable prejudice.

In the light of the said proponents, on the facts of the case this Court is of the considered view that the Court below had rightly dismissed the application and no interference is called for. This Court holds that the order passed by the Court below is not vitiated by illegality or error of jurisdiction or material misdirection which vary warrant an interference u/s 115 of the Civil Procedure Code. In the circumstance, the Civil Revision Petition fails and it is dismissed.

Consequently, connected C.M.P, is also dismissed. No costs.