

(2003) 12 MAD CK 0046

In the Madras High Court

Case No : Civil Revision Petition (PD) No. 1053 of 2002 and C.M.P. No. 8614 of 2002

Vellaichamay

APPELLANT

Vs

Yamulu Gounder, Savadamuthu, S. Savadamuthu and Su.
Savadamuthu

RESPONDENT

Date of Decision : 24-12-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (2004) 2 MLJ 231

Hon'ble Judges : V. Kanagaraj, J

Bench : Single Bench

Advocate : V. Lakshmi Narayanan, for the Appellant; M.V. Krishnan, for the Respondent

Final Decision : Dismissed

Judgement

V. Kanagaraj, J.—The above civil revision petition has been filed u/s 115 of the CPC praying to set aside the fair and decretal order dated

18.3.2002 made in I.A.No.108 of 2002 in O.S.No.80 of 2002 by the Court of II Additional District Munsif, Dindugal.

2. On a perusal of the materials placed on record and upon hearing the learned counsel for both, it comes to be known that the respondents 1 and

2 herein have filed the suit in O.S.No.80 of 2002 before the Court below as against the revision petitioner and respondents 3 and 4 herein for

declaration that the "A" schedule cart track is the maamool track for reaching the properties disclosed in "B" to "H" schedules and pending the

suit, the plaintiffs/respondents 1 and 2 have filed an application in I.A.No.59 of 2002 under Order 6 Rule 17 CPC for amendment of the plaint

schedule on ground that the defect in the plan and the schedule were noted only

at the time of inspection of property by the Advocate-

Commissioner and Surveyor; that S.No.617 is a anthem and therefore S.No.617 should be included and S.Nos.616/6-B and 616/10-B should be

deleted from the schedule of property.

3. This application is opposed by the second petitioner/revision petitioner on ground that the same is not maintainable and would pray to dismiss

the said application.

4. Based on the above pleadings, the trial Court would conduct an enquiry wherein no oral or documentary evidence was adduced on either side

and would ultimately allow the application on ground that the cause of action was not changed and no prejudice was caused to the defendants.

Aggrieved, the second defendant therein has come forward to file the above civil revision petition on grounds such as (i) that the Court below had

allowed the amendment application for injunction when the subject matter of the suit remains unamended; (ii) that the Court below ought to have

seen that Order 6 Rule 17 CPC pertains to an application for amendment in a suit and not to interim applications and (iii) that the Court below

should have appreciated that there cannot be two different properties for adjudication, one in the suit and another one in the application.

5. During the arguments, learned counsel for both the petitioner and the respondents would reiterate what has been pleaded before the lower

Court in the application and the counter and in the grounds of the above revision petition, which are extracted supra, with no new fact or

circumstance or law having been brought forth and therefore tracing the same will only be a repetition of those facts which have already been

extracted and hence the Court is left with no choice but to pass orders based on those materials made available in the context of the facts and

circumstances of the case and the law pertaining to the subject.

6. Prior to entering into the discussion since it is an application filed by the respondents No.1 and 2, who are the plaintiffs in the suit, before the

lower Court under Order VI, Rule 17 for amendment of the plaint, it is necessary to extract the said provision of law:

17. 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.

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".

7. So far as the import of the Order VI, Rule 17 is concerned, the Court could, at any stage of the proceedings, allow either party to alter or amend pleadings in such manner and on such terms for the purpose of determining the real questions in controversy between the parties. However, it is added in the proviso to the above rule that if the Court is satisfied that in spite of due diligence, the party could not raise the matter before commencement of trial, even after the commencement of trial, the application for amendment could be allowed.

8. The main rule is in the affirmative and the controversy is regarding the exception to the main rule which is negative in its approach states that unless the Court comes to the conclusion that in spite of due diligence, the party could not raise the matter before commencement of trial, no application for amendment shall be allowed.

9. In the light of the above provision of law and the discussion held here before, it is worthy to examine the two judgments rendered, both by the

Honourable Apex Court, which are reported in -

(i) Nair Service Society Ltd. Vs. Rev. Father K.C. Alexander and Others,

(ii) Shikharchand Jain Vs. Digamber Jain Praband Karini Sabha and Others,

10. Insofar as the first judgment cited above is concerned, the Hon"ble Apex Court has held that-

It is a fixed principle of law that a suit must be tried on the original cause of action and this principle governs not only the trial of suits but also

appeals. The appeal being a continuation of the suit new pleas are not considered. If circumstances change, they can form the subject of some

other proceedings but need not ordinarily be considered in the appeal. To this proposition there are a few exceptions. Some times, it happens that

the original relief claimed becomes inappropriate, or the law changes affecting the rights of the parties. In such cases Courts may allow an

amendment pleading the changed circumstances. Sometimes also the changed circumstances shorten litigation and then to avoid circuit of action the courts allow an amendment.

... as it was not one of those cases in which there was likelihood of prolonged litigation after remand or in which a new case would begin,

appellant was allowed to effect amendment so as to show to the Court that in addition to possession it had title"".

11. In the other judgment also the Hon"ble Apex Court in para No.11 of its judgment has held-

Ordinarily, a suit is tried in all its, stages on the cause of action as it existed on the date of its institution. But it is open to a Court including a Court

of appeal to take notice of events which have happened after the institution of the suit and afford relief to the parties in the changed circumstances

where it is shown that the relief claimed originally has (1) by reason of subsequent change of circumstances become inappropriate; or (2) where it

is necessary to take notice of the changed circumstances in order to shorten the litigation, or (3) to do complete justice between the parties.

12. In consideration of the facts pleaded, having regard to the materials placed on record, it comes to be known that the suit and the application

have been filed in one and the same year i.e. 2002 but no trial has commenced so far and the matter has been kept pending. Further more, a

perusal of the order passed by the trial Court, which is impugned herein, would reveal that the amendment sought for is in the injunction application

filed in I.A.No.59 of 2002 wherein the "A" schedule suit properties" Survey No.617 should be included. Part 3 takes its deviation from Survey

No.617 and the natham poramboke land and as though lying South-North on the West of Survey Nos.616/6B, 10, 11, 12, 19A, 616/18 and

616/41A and after filing of the Commissioner's Report on inspection by the Commissioner, the suit properties were found to have been forming

part of the village natham in Survey No.617 and therefore, Survey No.617 natham poramboke land also shoulds be brought into the suit "A"

schedule properties besides altering the injunction application and hence the amendment application.

13. The trial Court, having studied the facts and circumstances of the case in the context of the pleadings and in the light of the report submitted by

the Court Commissioner, would find that the Commissioner's Report would show that right from the beginning, the suit pathway was running in

natham poramboke land, Survey No.617 on its southern side through the other survey number shown here before, further giving the length and

breadth of the cart track as per his report and would find that in the facts and circumstances, it is only proper to permit the plaintiffs to carry out the

amendment sought for to the actual existence of the pathway which is the subject matter of the suit and application particularly when the defendants

also admit the existence of the cart track and because of the amendment sought to be introduced, neither the cause of action changes nor the basic

structure of the plaint is altered. On such findings, the Court below would allow the petition and it is this fair and decretal order passed by the

lower Court is challenged by one of the defendants.

14. In view of the fact that the amendment sought to be introduced is formal and to the facts on ground as it got established by the Commissioner's

Report and falling in tune with the letter and spirit of law and legal propositions held by the Honourable Apex Court, extracted supra, it is only

desirable to allow the amendment application which the lower Court has rightly done and this Court does not see any valid reason to interfere with

the well considered and merited order passed by the trial Court and hence the following order,

In result,

(i) the above Civil Revision Petition does not merit acceptance and deserves only to be dismissed and is dismissed accordingly.

(ii) The fair and decretal order dated 18.3.2002 made in I.A.No.108 of 2002 in O.S.No.80 of 2002 by the Court of II Additional District Munsif,

Dindugal is confirmed.

Consequently, CMP No. 8614 of 2002 is also dismissed.

However, in the circumstances of the case, there shall be no order as to costs.