

IN THE COURT OF THE DISTRICT MUNSIF, DEVAKOTTAI

PRESENT: Thiru. A. DHARANIDHARAN, B.Sc., M.L., M.A., LL.M.

District Munsif, Devakottai
Monday, the 27th day of June, 2022

I.A. 03/2021
in
O.S. No. 42/2017

1. Kasi @ Kasilingam --Petitioner/Plaintiff

/Vs/

1. Alagappan
2. Kumutha ---Respondents/Defendants

This petition having been finally heard on 25.04.2022 in the presence of Mr. A.S. Chellappa, learned counsel for the petitioner/plaintiff and Mr. V. Sundar, the learned counsel for 1st respondent/defendant and Mr. C. Lenin Bharathi, the learned counsel for 2nd respondent/defendant and upon hearing the arguments of both sides and after perusal of the entire records and having stood over for my consideration till this day, this Court decided to deliver the following:

ORDER

This is a petition filed under Order VI Rule 16 and 17 r/w Sec 151 of Civil Procedure code praying to amend the plaint.

2. The averments set out in the petition/affidavit filed by the petitioner is as follows:

2.1 The Petitioner states that an amend should be made in the prayer of the plaint that “(c) to declare the sale deed executed by 1st defendant to 2nd defendant for an extent of 2.54 Acres on 11/09/2013 is null and void.”

2.2 The contention of the 1st respondent is that the prayer will amount to waiver as per Order 2 Rule 2 of CPC. The contention of the 2nd respondent is that the petition is not legally valid.

3. Now the point for consideration is, whether the petition filed by the Petitioner / Plaintiff for amendment of the Plaint is to be allowed or not?

4. No oral or documentary evidence was adduced on the side of the Petitioner/Plaintiff.

5. No oral or documentary evidence was adduced on the side of the Respondents/Defendants.

6. Both side arguments heard.

7. The Proviso clause of Order VI Rule 17 imposes a heavy responsibility upon the Court to consider the amendment after commencement of the trial. It reads, “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. This Court also refers a decision of the Hon’ble High Court in *Sivakumar Vs Balasubramaniyan (2012) 5 MLJ 1035* in which it has been emphasized that after

the commencement of trial, amendment should not be entertained unless due diligence is shown by the Petitioner.

The Hon'ble High Court in *J. R. Arun Kumar & Others Vs K. Boopalan 2012 5 L W 389* wherein it has been observed that the amendment proposed after the PW1 was cross examined is woefully failed to satisfy that in spite of due diligence, the amendment court not be raised before the Commencement of trial.

The Hon'ble Apex Court in *Rameshkumar Agarwal Vs Rajmala Exports P. Ltd & Others 2012 4 MLJ 326 : 2012 5 SCC 337* wherein it has been observed thus:

“Paragraph 11. It is clear that while deciding the application for amendment Ordinarily the Court must not refuse bonafide, legitimate, honest and necessary amendments and should never permit malafide and dishonest amendments. The purpose and object of the Order VI Rule 17 of the Code is to allow either party to alter or amend his pleadings in such a manner and on such terms as may be just. Amendment cannot be claimed as a matter of right under all circumstances, but the Courts while deciding such prayers should not adopt a hyper-technical approach.”

Hence, this court is of the considered opinion that there is a bonafide plea of the Petitioner to amend the Plaint.

8. This Court is of the considered opinion that whether the amendment sought is important for proper and effective adjudication of case. Whether the petition for amendment is bonafide or malafide and refused to amend

would lead to injustice or leads to further litigation and thinks fit to allow this petition.

In the result, this petition is allowed in the interest of justice.

This Order was directly typed by me in my official laptop, corrected by me and pronounced by me in the open Court on this the 27th day of June, 2022.

**District Munsif,
Devakottai.**

Annexure:

List of witnesses on the side of the Petitioner/Plaintiff
NIL

List of documents on the side of the Petitioner/Plaintiff
NIL

List of witnesses on the side of the Respondents/Defendants
NIL

List of documents on the side of the Respondents/Defendants
NIL

**District Munsif,
Devakottai**