

IN THE COURT OF THE DISTRICT MUNSIF, TIRUTTANI

Present : Tmt. S. KAVIPRIYA, B.A., LLB.,
District Munsif, Tiruttani

Dated this Monday the 13th Day of December 2021

IA.No.2 OF 2021 in OS.No.43 OF 2015

...

G. Jayaseeli

...Petitioner / Plaintiff

/Versus/

S. Amavasai

....Respondent / Defendant

This petition came up before me for final hearing on 26.11.2021 in the presence of M/s. M. MohanRaju and G. Sivakumar, Counsels for petitioner and M/s. V.S.Velayudham and L. Sudhapriyan, Counsels for Respondent. Upon hearing both sides and having stood over for consideration till this day, this court delivered the following:-

ORDER

This petition is filed under Order 6 Rule 16 & 17 of CPC to amend the
Plaint.

Petition avernments in brief in as follows:-

2. The petitioner filed the above suit against the defendant for permanent injunction restraining the respondent from interfere with the petitioner's peaceful possession and enjoyment of the suit B schedule property. After filing of the above suit the Defendant high handedly laid foundation in the suit 'B' schedule property by violating interim injunction order granted by this Court in IA.No.224/2015 and then continued the said construction till lintel level. The petitioner filed contempt petition IA.No.51/2012 and restoration of possession of suit 'B' schedule property in IA.No.50/2017, but both the petitions were dismissed by this Hon'ble Court. Now the petitioner have to amend the suit for declaration of his right and title to suit 'B' schedule property and for possession of the said property and also for Mandatory injunction directing the Defendant

to remove the illegal constructions made by him in the suit 'B' schedule property. The proposed amendment will not change the nature of the suit and it will avoid multiplicity of proceedings.

Counter averments in brief are as follows:-

3. The petition is not maintainable either in law or on facts. This petition for amendment of prayer for declaration and recovery of possession is highly belated one and new cause of action arises. The reasons stated in the affidavit are all false and new cause of action by introducing and amendment will project the new case and it will affect or changed the original suit nature of suit. The proposed amendment will change the plaint averments which entirely different from the original plaint. The petitioner filed this petition as his own wish and whim which could not permitted by law. The Plaintiff/ Petitioner never in possession and enjoyment of suit 'B' schedule property even prior to filing of this suit. The petitioner was not of possession of suit 'B' schedule property and very next day an Advocate Commission inspected the suit property on the order of exparty, he filed detailed report before this Hon'ble Court. The description of suit property and measurements were wrongly mentioned and same was amended after commissioner report and this Hon'ble court also permitted the petitioner to amend the plaint. The petitioner already filed a petition for temporary injunction which was ordered as status quo to be maintained on merits. The petitioner filed another petition for contempt against him and same also dismissed on merits. No appeal preferred by the petitioner till so far. Further the petitioner filed petition under section 151 of CPC for restoration of suit 'B' schedule property after demolishing superstructures / building constructed thereon and same also dismissed by this Court on merit. No appeal was filed against the said order till so far. So the above orders were operate as resjudicata and barred the amendment of prayer for recovery of possession. Since the order passed by this Court against the petitioner will operate as

resjudicata. Hence this petition is not maintainable as per law and the petitioner is not entitled the proposed amendment which already sought so many relief in interim application and same was denied by this Court. Hence this petition ought to have been dismissed for the reasons stated supra. The petitioner already filed petition for appointment of Taluk Surveyor to measure the suit property and to find out the encroachment of suit 'B' schedule property and same was also dismissed on merits. The said order passed by this Court also not appealed till so far. So the petitioner filed so many above petitions against this respondent to harass him and the above petitions were dismissed by this Court on merits and no appeal filed against the said order passed this court against the petitioner. On the date of filing this suit the petitioner/plaintiff was not in possession and enjoyment of the suit 'B' schedule property. So, no amendment petition entertained in the absence of dispossession when after filing of the suit. So, an Advocate commissioner report will reveal that on the filing of the suit, petitioner/ plaintiff was not in possession and enjoyment of the suit 'B' schedule property. So, the amendment petition is liable to be dismissed. Further the petitioner/ plaintiff filed this suit by abusing process of court, and he suppressed the true facts about the existence of possession of suit property by her. So, the petitioner has not pleaded independent title, right and interest over the suit property. Hence this petition may be dismissed with costs. The proposed amendment of prayer for declaration and recovery of possession would change cause of action, nature of suit, and entirely to be changed the suit allegations, it would cause prejudice to this respondent. Hence nature of suit and plaint averments ought to have been amended. But no such averment was sought for amendment, since the plaint averments are for permanent injunction relief alone and no plaint averments seek to add in the plaint. Hence, the petition for amendment to be dismissed for the reasons stated supra. the petitioners never filed amendment petition for their own wishes and whim. So, before filing of

this suit this respondent disputes title and possession of the petitioner. So, the proposed amendment will cause prejudice to this respondent and this petition was filed only to drag the proceedings. This respondent relied a judgment reported in 2010 (1) MWN (civil) 460 SC which is squarely apply to facts of this case. The Hon'ble Supreme Court of India has detailed order pronounced in the above case about the amendment of prayer in plaint and requirement of allegations for amendment. so as per the above decision, this petition ought to have been dismissed. If the petition is allowed respondent will be prejudiced. The petition has no merits and fully devoid of merits. The petition is highly belated. This petition was filed after 6 years of filing of this suit. Hence the petition for amendment is barred law of limitation, since this petition ought to have been filed within 3 years from the date of suit. This petition is filed after 6 years of written statement filed by this respondent. Hence the petition has no merits and liable to be dismissed.

Point for determination:-

4. Whether the petitioner is entitled to the relief as sought for?

5. The petitioner filed this petition to amend the plaint as detailed in the petition. The petitioner stated that he filed the suit against the defendant for permanent injunction restraining the respondent from interfering with his peaceful possession and enjoyment of the suit B schedule property. After filing of the suit the Defendant high handedly laid foundation in 'B' schedule property by violating interim injunction order granted by this Court in IA.No.224/2015 and continued the said construction till lintel level. Hence, the petitioner filed contempt petition IA.No.51/2017 and also filed petition for restoration of possession of suit 'B' schedule property in IA.No.50/2017, but both the petitions was dismissed by this Hon'ble Court. Hence, the petitioner has to amend the suit for declaration of right and title to suit 'B' schedule property and for possession of the said property and also for Mandatory

injunction directing the Defendant/ respondent to remove the illegal constructions made by him in the suit 'B' schedule property. The proposed amendment will not change the nature of the proceedings and to avoid multiplicity of proceedings, this petition was filed.

6. But to the contra, the respondent herein contended that the petition was filed belatedly and new cause of action arises. Hence, it will change nature of the original suit. But the Petitioner never in possession and enjoyment of suit 'B' schedule property even prior to filing of the suit. The petitioner was not in possession of suit 'B' schedule property and very next day an Advocate Commission inspected the suit property by an order of ex parte and he filed his report in which the measurements and description of property wrongly mentioned and the same was amended after the commissioner report and this Hon'ble court also permitted to amend the plaint. The petitioner already filed a petition for temporary injunction which was ordered as status quo to be maintained on merits. The petitioner again filed contempt petition against this respondent it was also dismissed on merits. There was no appeal preferred by the petitioner till so far. The petitioner also filed petition for restoration of suit 'B' schedule property after demolishing superstructures / building constructed thereon and the same was also dismissed on merits. There was no appeal or revision preferred. Hence, the above orders were operate as res judicata and barred the amendment of prayer for recovery of possession. Hence this petition is not maintainable and it has to be dismissed. The petitioner also filed petition for appointment of Taluk Surveyor to measure the suit property and to find out the encroachment in 'B' schedule property and the same was also dismissed on merits and there was no appeal preferred so far. Hence the petitioner filed so many petitions against the respondent to harass him. The petitioner on the date of filing of the suit, he was not in possession and enjoyment of 'B' schedule property hence amendment will not be entertained. Hence the Advocate

commissioner report will reveals that on the date of filing of suit, petitioner was not in possession and enjoyment of 'B' schedule property. The respondent herein relied upon our Hon'ble Supreme Court judgment reported in 2010 (1) MWN (cilvil) 460 SC which is squarely apply to facts of this case. The Hon'ble Supreme Court of India has given detailed order pronounced in the above case about the amendment of prayer in plaint and requirement of allegations for amendment. If the petition is allowed respondent will be prejudiced. The petition has no merits and fully devoid of merits. The petition is highly belated one and filed after 6 years. Hence this petition was barred by limitation since the petition to be filed within 3 years from the date of suit.

7. At this juncture, it has to be decided whether the petition is maintainable or not. The petitioner filed suit for permanent injunction on 23.04.2015 and on the same date the Advocate Commissioner petition also filed and the report was filed on 25.06.2015. Hence on perusal of Advocate Commissioner report it reveals that the respondent have encroached in B schedule property North Sourth 5 feet East West 30 feet by raising 'Kaddakkal'. Hence on perusal of the report it reveals that the respondent herein have encroached the petitioner B schedule property. Meanwhile the petitioner have filed so many petitions for injunction which was ordered for status-Quo till the disposal of the suit and contempt petition and also restoration petition and Surveyor commission petition also dismissed and now the petitioner filed this petition for amendment. But the respondent herein have contended that if amendment was allowed a new cause of action will arises and the petition was filed belatedly after 6 years. According to law as in section 65 of limitation act recovery of possession is 12 years from the date of dispossession. Hence the petitioner have filed this petition within limitation hence the petition is not barred by limitation act. The petitioner have taken steps to amend the plaint will not cause any prejudice to the respondent.

Since there was a dispute in extent of the suit property. Hence, this Court relies upon our Hon'ble High Court of Madras judgment in **1. Rangarajan & anr. Vs. 1. Rajendran & anr. dated 05 May 2017 as follows:-**

"As noted hgerain earlier, the prayer for amendment was refused by the High Court on two grounds. so far as the first ground is concerned i.e., the prayer for amendment was a belated one, we are of the view that even if it was belated, then also, the question that needs to be decided is to see whether by allowing the amendment, the real controversy between the parties may be resolved. It is well settled that under Order 6 Rule 17 of the Code of Civil Procedure, wide powers and unfettered discretion have been conferred on the Court to allow amendment of the pleadings to a party in such a manner and on such terms as it appears to the Court just and proper. Even if, such an application for amenment of the plaint ws filed belatedly, such belated amendment cannot be refused if it is found that for deciding the real controversy between the parties, it can be allowed on payment of costs. Therefore, in our view, mere delay and laches in making the application for amendment cannot be a ground to refuse the amendment.

In so far as the second principle whether the amendment if allowed will change the nature and character of the suit, in the case in hand, the real controversy between the partities is in respect of the suit rpoeprty which admittedly stands in the name of the plaintiffs and the defendant's father was a cultivating tenant under the Plaintiffs. While the Plaintiffs claim tha the possession is with them and had filed the suit for injunction, the contra case of the Defendants is that as a cultivating tenant, they are in possession of the property for years together and the possession is not with the plaintiffs. Further,

by virtue of power of attorney document executed by the 1st Plaintiff in favour of the 1st Defendant, the 1st Defendant has sold away the property to the second Defendant. Therefore, altering the suit for bare injunction into suit for title and recovery of possession, amounts to changing the nature and character of the suit prejudicing the Defendants.

Order 6 Rule 17 of the CPC confers jurisdiction on the Court to allow either party to alter or amend his pleadings at any stage of the proceedings and on such terms as may be just. Such amendments as are directed towards putting-form and seeking determination of the real questions in controversy between the parties shall be permitted to be made. The question of delay in moving an application for amendment should be decided not by calculating the period from the date of institution of the suit alone but by reference to the stage to which the hearing in the suit has proceeded. Pre-trial amendments are allowed more liberally than those which are sought to be made after the commencement of the trial or after conclusion thereof. In former case generally it can be assumed that the Defendant is not prejudiced because he will have full opportunity of meeting the case of the Plaintiff as amended. In the latter case the question of prejudice to the opposite party may arise and that shall have to be answered by reference to the facts and circumstances of each individual case. No strait-jacket formula can be laid down. The fact remains that a mere delay cannot be a ground for refusing a prayer for amendment".

8. Even then as per our Hon'ble Supreme Court and Hon'ble High Court judgment liberal approach to be taken when petition for amendment was filed at pretrial. Since this suit was pending for post trial at any stage petition

can be filed by considering the facts and circumstances of the case. Moreover, there was one after another petition filed for restoration and surveyor commission which was also dismissed. Hence limitation cannot be calculated from date of institution of suit. Hence in the interest of justice to avoid multiplicity of proceedings this petition is to be allowed without costs.

8. **In the result, this petition is allowed without costs.**

Dictated to Steno – Typist, computerized by her directly, corrected and pronounced by me in open court, this the 13th day of December 2021.

Sd/- S. Kavipriya
District Munsif,
Tiruttani.

Both sides Exhibits and witnesses: NIL

Sd/- S. Kavipriya
District Munsif,
Tiruttani.