

**IN THE COURT OF DISTRICT MUNSIF, KATPADI, VELLORE DISTRICT
PRESENT: THIRU. K.VENKATESAN, B.A., B.L.,
DISTRICT MUNSIF, KATPADI**

Monday, this the 15th Day of July – 2024

**I.A.No. 2 of 2023
In
I.A.No. 505 of 2018
In
O.S.No. 110 of 2018
(CNR.No.TNVL23-000177-2018)**

Jayachandra Naidu

.....Petitioner/Plaintiff

-Vs-

1. Jaganathan

2. Mohan

.....Respondents/Defendants

This petition has come up today before this Court for orders, and upon hearing the arguments of Thiru. K.M.Saravanan & S.Mohan Raj, the Counsels for the Petitioner, and Thiru. M.L.Jambu Kumar, the Counsel for the Respondents, and upon perusing the petition, counter and the case records, and having stood for consideration till this date, this Court delivers the following:-

ORDER

This petition has been filed by the Petitioner/Plaintiff under Order 6 Rule 17 and Section 151 of Code of Civil Procedure for permit him to amend the Schedule of property of the I.A.No.505/2018 as per the particulars mentioned in this petition.

1. **Brief averments of the affidavit filed by the Petitioner is as follows:-**

1.1 The Petitioner is the Plaintiff in the above Suit. The Petitioner states that he has filed the above Suit for declaration and possession as against the Respondents. At the time of filing of the Suit, he has described the entire extent got by him as Suit 'A' Schedule, and described the encroached portion as Suit 'B' Schedule. But, he has wrongly mentioned the boundaries over the Suit 'A' and 'B' Schedule property by mistake and oversight, and further states that it was happened while converting the boundaries over the properties from Tamil to English. The above said mistake is a Typographical Error in nature.

1.2 In fact, he has also filed an application for Appointment of Advocate Commissioner vide I.A.No.505/2018, and this Court also appointed an Advocate Commissioner, and he also inspected the Suit properties, and at that time only, the Petitioner came to know that the boundaries over the Suit properties are not correct and it is mismatch directions.

1.3 The above said mistakes are neither wilful nor wanton. Hence, the Petitioner filing is petition to amend the Schedule of property of the I.A.No.505/2018 as per the particulars mentioned in this petition. If the Amendment is not allowed, he will be put to great loss and hardship. At the same time, if the petition is allowed, the same will not cause any pre-judice to the other side, and the proposed amendment will not

change the nature of the Suit and the Cause of Action. Hence, he prayed to allow this petition.

2. **Brief averments of the counter filed by the 2nd Respondent is as follows:- (Adopted by the 1st Respondent)**

2.1 The petition filed by the Petitioner is not sustainable either in law or on facts of the case, and the Respondents denies the all the allegations averred in the affidavit of the Petitioner, and stated that the Plaintiff has filed the above Suit in the year 2018, and after 6 years, this sort of Amendment Petition is filed. It is further stated that this petition under Order 6 Rule 17 of CPC is for amending the pleadings which means Plaintiff and as well as the Written Statement, and not in the petition, and therefore, this sort of belated and unwarranted petition should not be entertained & liable to be dismissed.

2.2 The only remedy for the Plaintiff is to not press the present Commission petition and to file fresh application with correct particulars, after effected proper petition before trial side. Furthermore, this petition is filed without proper reasons, and the Schedule of property must be given in accordance with the Title Deed of the Plaintiff, and without followed the Plaintiff Schedule, in the Commission petition Schedule is given which is wrong. Now the very same mistake is doing by not putting the Schedule of property in accordance with the Title Deed of the Plaintiff, and therefore, the present petition is not proper.

2.3 First of all the Petitioner/Plaintiff has to filed petition seeking Amendment in the Plaint, and he cannot be file petition straight away in the Commission petition. After allowing the Amendment petition in the Trial side only, the Petitioner can file Amendment petition in the petitions filed in the Suit, and therefore, the present petition cannot be entertained before allowing amendment petition in the Suit.

2.4 In Para-2 of the affidavit, the Petitioner stated that 'I have wrongly mentioned the boundaries now the Suit 'A' and 'B' Schedule property by mistake and oversight' but in the petition Schedule is mentioned to correct only 'B' Schedule only, and therefore, the same has to be corrected first. Without mentioned Suit 'A' Schedule in the petition, how could correct the 'A' and 'B' Schedule boundaries, and therefore the present petition filed by the Petitioner also not correct, and prayed to dismiss the petition with costs.

3. Neither the Petitioner nor the Respondents have placed any oral or documentary evidence before this Court.

4. **Point for Consideration:-**

(a) Whether this petition to amend the petition as per the particulars mentioned in the petition, is entitled to be allowed or not?

5. **Answering to the Point:-**

Both sides has been heard. Records perused. Upon careful analysis of the entire case records including the petition, counter and upon considering the arguments on

either sides, it is found that the Plaintiff has filed the Suit for declaring his right & title over the 'A' Schedule property, and also directing the Defendants to deliver the 10 Cents in S.N.2/1 encroached by them described as 'B' Schedule property, and put the Plaintiff in possession in 'B' Schedule property, and for Permanent Injunction restraining the Defendants from interfering with the Plaintiff's peaceful possession and enjoyment of the Suit property, and for costs.

6. The present Petitioner is the Plaintiff, and the Respondents herein are the Defendants in the Suit. It is seen from the records that in this case, on receipt of Summons, the Defendants have entered appearance & have filed their Written Statement on 04.01.2019, and Issues were framed as early as on 08.01.2020, and as on date, the trial is not commenced yet. At this juncture, the Petitioner/Plaintiff has come forward & filed this present Amendment petition.

7. Before parting with the petition, it is appropriate to see Order 6 Rule 17 of CPC which reads as under:

“Amendment of Pleading.- 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.”

7.1 In this regard, it is inevitable to rely upon the judgment of the Hon’ble Apex Court rendered in **Rajkumar Gurawara (Dead) Through L.Rs Vs. S.K.Sarwagi & Company Private Limited & Anr.**, reported in (2008) 14 SCC 364, considered the scope of amendment of pleadings before or after the commencement of the trial. In Paragraph-18, held as under:-

‘.....It is settled law that the grant of application for amendment be subject to certain conditions, namely, (i) When the nature of it is changed by permitting amendment; (ii) When the amendment would result introducing new cause of action and intends to prejudice the other party; (iii) When allowing amendment application defeats the law of limitation...’

7.2 In another Judgment of Hon’ble Apex Court in **Revajeetu Builders & Developers Vs. V. Narayanaswamy & Sons**, reported in (2009) 10 SCC 84 in which held that while considering an application for amendment, the Court is not to examine the merits of the amendment or to consider the strength or weakness of the case of the applicant, but to examine the proposed amendment to ascertain whether the nature and character of the suit is sought to be changed by the proposed amendment. More

particularly, in Para-67 what are the factors to be taken into consideration while dealing with application for amendments, which are as under:

- “1. Whether the amendment sought is imperative for proper and effective adjudication of the case;
2. Whether the application for amendment is bona fide or mala fide;
3. The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;
4. Refusing amendment would in fact lead to injustice or lead to multiple litigation;
5. Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and
6. As a general rule, the Court should not decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

68. These are some of the important factors which may be kept in mind while dealing with application filed under Order VI Rule 17 of CPC. These are only illustrative and not exhaustive.”

8. Keeping the above said principles & factors in mind, this Court deals the present case on hand. In the affidavit, the Petitioner/Plaintiff has stated that at the time of filing of the Suit, he has described the entire extent got by him as Suit ‘A’ Schedule, and described the encroached portion as Suit ‘B’ Schedule, and an Advocate Commissioner

has been appointed by this Court vide in I.A.No.505/2018, and he also inspected the Suit properties, and at that time only, the Petitioner came to know that the boundaries over the Suit properties are not correct and it is mismatch directions. The said wrong mentioning of boundaries over the Suit 'A' and 'B' Schedule property are happened while converting the boundaries over the properties from Tamil to English by mistake & oversight and the said mistake is a Typographical Error in nature and prayed to amend the Schedule of property of the I.A.No.505/2018 as per the particulars mentioned in this petition, and he seeks permission for amend the Schedule of property of the I.A.No.505/2018 as per the particulars mentioned in this petition.

9. On the other hand, the Respondents have vehemently objected that the above Suit is filed in the year 2018, and after lapse of 6 years, this sort of Amendment Petition has been filed belatedly. Under Order 6 Rule 17 of CPC is meant for amend the pleadings, but not for amend the petition. This petition is filed without proper reasons, and the proposed Amendment in the Schedule of property is not in accordance with the Title Deed of the Plaintiff. Further it is countered that without amending the Plaint, the proposed Amendment sought straight away in the petition is not proper. In Para-2 of the petition Affidavit, the Petitioner has stated that 'I have wrongly mentioned the boundaries now the Suit 'A' and 'B' Schedule property by mistake and oversight. But the proposed Amendment is only in respect to correct 'B' Schedule only, and is not for Suit

‘A’ Schedule, and therefore the present petition filed by the Petitioner also not correct, and prayed to dismiss the petition.

10. It shows from the proposed particulars of Amendment, the Petitioner has filed the present petition to Correct the Boundaries over the Suit ‘A’ & ‘B’ Schedule properties in I.A.No.505/2018. It is pertinent to note that in the same line, the Petitioner has filed a similar petition to Correct the Plaint Schedule in the above case which is also today has come before this Court for orders in I.A.No.3/2023 along with this petition. On bare reading of the Counter, it is not specifically countered by the Respondents that the reasons assigned by the Petitioner is already known to him about the mismatch of Boundaries over the Suit ‘A’ & ‘B’ properties. No where in Counter, the Respondents have objected the Suit properties was not inspected by the Advocate Commissioner, and the mismatch of Boundaries are not found only at the time of inspection by the said Advocate Commissioner.

11. It is true and no doubt that Under Order 6 Rule 17 of CPC is meant for amend the pleading. It is noteworthy to pointed out that the Advocate Commissioner petition i.e., I.A.No.505/2018 mentioned Schedule of properties are none other than the Suit properties. It is settled preposition of law that mere quoting of wrong provisions of law is not barred to grant reliefs. Further, the Court may use its’ saving of inherent powers if it is necessary for the ends of justice or to prevent abuse of the process of Court.

12. Already this Court has appointed an Advocate Commissioner in the above I.A.No.505/2018 as per Plaint Schedule, and he has not filed his Commissioner Report so far. It is evident from this petition & counter, the said Advocate Commissioner could not able to complete his task due to mismatch of Boundaries which is caused the Plaintiff to file 2 amendment petition to correct the Boundaries over the Suit 'A' & 'B' properties in the I.A.No.505/2018 as well as in the Suit.

13. From the above facts & circumstances of the present case on hand, this Court is of the considered view that the proposed amendment sought in the petition is not going to change the nature of claims in the Suit or the cause of action. On the other hand, this said proposed Amendment would helpful to the Court to determine the issues involved in the Suit & complete the task assigned to the Advocate Commissioner.

14. From the above cumulative discussions made above, this Court is opine that since the Suit is for Declaration and possession, and for Permanent injunction, the amendment sought for in this petition is mere Correction of four boundaries over the Suit 'A' & 'B' Schedule properties alone, and the same is imperative for the proper and effective adjudication of the petition/case, and the said amendment if allowed will not cause any pre-judice to the Respondents. Further, it would bring more clarity and would help in proper adjudication of the petition/Suit. However, the Petitioner/Plaintiff did not give correct particulars at the time of filing of the Suit, and filed this petition at the earliest point of time and has filed with the delay about of 5 years from the date of filing

of Suit, and the same can be compensated to the Respondents. For the above said reasons, this Court is inclined to allow this petition on terms. Accordingly, the Point is answered in favour of the Petitioner.

15. **Result:-**

In fine, in the interest of justice, this petition is allowed subject to condition of payment of costs of Rs.2,000/- to Respondents on or before 31.07.2024, if failing which this petition shall stand dismissed without any further reference. For reporting compliance call on 08.08.2024.

-//Dictated by me to the Steno-typist, who directly typed the same, corrected and pronounced by me in the Open Court, on this the 15th Day of July – 2024.//-

(Sd/-).. K.Venkatesan
DISTRICT MUNSIF
KATPADI

Both side documents and witnesses: Nil

(Sd/-).. K.Venkatesan
DISTRICT MUNSIF
KATPADI