

**In the Court of the Additional District & Sessions Judge,
Srivilliputtur.**

**Present : Tmt. Gajara R. Jiji, M.A., L.L.M.,
Additional District Judge,
Srivilliputtur.**

Saturday, the 3rd day of February 2024

I.A.No.7/2023

in

O.S. 112/2018

.....

1) B. Mohamed Dharves

2) N. Peer Mohamed Meeran

... Petitioners / Defendants 4 and 5

/vs/

V.A.S. Archuna Raja

... Respondent / Plaintiff

This petition came before me for final hearing on 24.01.2024 in the presence of Thiru.S. Tamil Palai Mannan, Advocate for the petitioners, and of Thiru.S. Kiruba Vijay Anand, Advocate for the respondent, and upon hearing arguments on both side and perusing the case records, this Court passed the following....

ORDER

This is a petition under Order 6 Rule 17 and Section 151 of CPC to amend the written statement.

1. Averments in the petition in brief are as follows:

The petitioners are defendants 4 and 5 in the suit. The suit is filed for partition, declaration and injunction. The petitioners filed their written statement and now the case is posted for cross-examination of plaintiff side witness. The petitioners had entered into sale agreement with the 3rd defendant in order to buy the suit 2nd and 3rd schedule properties for an amount of Rs.32,00,000/- and a sale agreement was entered into on 20.05.2017. Later the petitioners paid the entire sale amount of

Rs.32,00,000/- to the 3rd defendant and purchased suit 2nd and 3rd item properties on 17.10.2017 vide document No. 2951/2017 While filing the written statement the petitioners were unable to lay their hands on the sale agreement dated 20.05.2017 and recently found the sale agreement and it is seen that the sale amount is Rs.32,00,000/- but in the written statement the purchase amount is stated as Rs.33,00,000/- which is a typographical error. Hence it is necessary to amend the written statement in order to remove the amount as Rs.33,00,00/- and include the amount of Rs.32,00,000/-. There will be no change in the nature of the defense even if the amount is amended. Hence prays to allow the petition.

2. Averments in the counter statement in brief are as follows :-

The petition is not maintainable both in law and on facts. The respondent/plaintiff filed the proof affidavit and marked documents on 08.11.2023 and the case is posted for cross-examination. Now the petitioners have filed the amendment petition. The Hon'ble Apex Court in J. Samuel and others Vs. Gattu Mahesh and others held that amendment petition should not be allowed after commencement of trial for typographical mistake. This petition is filed only to delay the cross-examination and prays to dismiss the petition with costs.

3. No oral or documentary evidence produced on either side. Heard both side.

4. Point for Consideration

- 1) Whether the amendments sought by the petitioner is to be permitted or not?
- 2) Whether the petition is to be allowed or not?

5. Points and answer :-

The points to be decided are interlinked and interwoven and hence the points are decided together.

The petitioners are the 4th and 5th defendants in the suit. The petitioners have filed this petition to amend the written statement. The petitioners state that the sale amount has been mentioned as Rs.33,00,000/- instead of Rs.32,00,000/-. The petitioners have produced the copy of sale agreement along with this application wherein the agreed sale amount is mentioned as Rs.32,00,000/-. Whereas in the written statement of D4 and D5, Page 4 - Para 8 and page 5 - para 10, the sale amount has been mentioned as Rs.33,00,000/-. Hence the contention of the learned counsel for the petitioner that the sale amount has been wrongly mentioned is correct.

6. The learned counsel for the respondent / plaintiff would vehemently oppose the petition and argued that the petitioners / defendants 4 and 5 cannot seek amendment of the typographical mistake after the trial of the case has begun. The learned counsel pressed into service the judgment of our Honourable Supreme Court in ***J. Samuel and others Vs. Gattu Mahesh and others indian kanoon-<http://indiankanoon.org/doc/92780964/>*** and argued that no amendment could be made after the commencement of trial. The learned counsel depended on the Para 16 of the judgment which runs as,

16) The claim of typographical error/mistake is baseless and cannot be accepted. In fact, had the person who prepared the plaint, signed

and verified the plaint showed some attention, this omission could have been noticed and rectified there itself. In such circumstances, it cannot be construed that due diligence was adhered to and in any event, omission of mandatory requirement running into 3 to 4 sentences cannot be a typographical error as claimed by the plaintiffs. All these aspects have been rightly considered and concluded by the trial court and the High Court has committed an error in accepting the explanation that it was a typographical error to mention and it was an accidental slip. Though the counsel for the appellants have cited many decisions, on perusal, we are of the view that some of those cases have been decided prior to the insertion of Order VI Rule 17 with proviso or on the peculiar facts of that case. This Court in various decisions upheld the power that in deserving cases, the Court can allow delayed amendment by compensating the other side by awarding costs. The entire object of the amendment to Order VI Rule 17 as introduced in 2002 is to stall filing of application for amending a pleading subsequent to the commencement of trial, to avoid surprises and that the parties had sufficient knowledge of other's case. It also helps checking the delays in filing the applications. [vide Aniglase Yohannan vs. Ramalatha and Others, (2005) 7 SCC 534, Ajendraprasadji N. Pandey and Another vs. Swami Keshavprakeshdasji N. and Others, Chander Kanta Bansal vs. Rajinder Singh Anand, (2008) 5 SCC 117, Rajkumar Guraward (dead) through LRS. vs. S.K. Sarwagi and Company Private Limited and Another, (2008) 14 SCC 364, Vidyabai and Others vs. Padmalatha and Another, (2009) 2 SCC 409, Man Kaur (dead) By LRS vs. Hartar Singh Sangha, (2010) 10 SCC 512.

It is true that the Supreme Court has viewed seriously regarding the belated amendment of pleadings. The reported case law is regarding amendment of the plaint. Further in the reported case law, the amendment has been sought after the posting of the case for judgment. But in the case in hand, the petitioner has filed the petition immediately after PW1 filed his proof affidavit. It is also pertinent to note that the respondent / plaintiff himself has filed petition to receive reply statement to the counter claim filed by the defendants 10 and 11 only after the commencement of trial. Hence considering the facts and circumstances of this case, the reported case law is distinguishable and hence considering the nature of amendment and the facts and circumstances of the case this court is inclined to permit the petitioner to amend the written statement as prayed for.

In the result, the petition is allowed. No costs.

Dictated to Steno Typist, typed by her in computer, then corrected and pronounced by me in open court, on this the 3rd day of February 2024.

Additional District and Sessions Judge,
Srivilliputtur.

Additional District & Sessions
Court,
Srivilliputtur,
I.A. 7/2023 in O.S. No. 112/2018
ORDER (Web copy)
Date: 03.02.2024