

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

**Present : Thiru.K.Poorana Jeya Anand, M.A., M.L.,
Additional District Judge, (FAC)
Srivilliputtur.**

Wednesday, the 12th day of April 2023

I.A.No.3/2022

in

O.S. 139/2010

.....

Thanraj

... Petitioner / Plaintiff

/vs/

- 1) John Selvaraj (Died)
- 2) John Jayakumar (Died)
- 3) John Rajkumar
- 4) John Vethamuthu
- 5) Sankareswari
- 6) Edison
- 7) Esthar Thayammal
- 8) Victoriya
- 9) Lilli
- 10) Arulmani

11) Christober

12) Kirubakaran

.. Respondents / Defendants

This petition came before me for final hearing on 11.04.2023 in the presence of Thiru.A.S. Chandrasekaran, Advocate for the petitioner, and of Thiru.S. Umapathi, Advocate for the respondents 4, 6, 11 & 12 and of Thiru.P. Pandiselvam, Advocate for the 3rd respondent, and of the respondents 5, 7 to 10 were set exparte, 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 plaint.

1. The short facts of the petition in brief are as follows:

The Petitioner is the plaintiff in the above suit. The supporting affidavit has been filed by the petitioner/plaintiff. He has filed the suit for specific performance. The petitioner has filed this petition to amend the plaint in the 6th defendant's name as Edison Joseph instead of Edison. Further the plaintiff mentioned to amend the plaint about the consideration given by the plaintiff to the defendants in several dates as mentioned in the petition is to be included in the plaint. Hence this petition.

2. The short facts of the counter filed by the 11th Respondent and adopted by the respondents 3, 4, 6 & 12 :-

The petition is barred by limitation and so this is not maintainable either in law or on facts. The respondents received any amount from the plaintiff as alleged by the plaintiff in the plaint. Hence the petition is liable to be dismissed.

3. During enquiry no evidence, oral or documentary was let in. This Court has considered the submissions of both and perused the materials on record.

4. Now the Point for Consideration is whether the petitioner can be allowed or not?

Heard Both side.

5. This is the application filed by the petitioner to amend the plaint in the 6th defendant's name as Edison Joseph instead of Edison. Further the plaintiff mentioned to amend the plaint about the consideration given by the plaintiff to the defendants in several dates as mentioned in the petition is to be included in the plaint.

6. The Learned Counsel for the defendants contended that the petition is barred by limitation and so this is not maintainable either in law or on facts. The respondents did not receive any amount from the plaintiff as alleged by the plaintiff in the plaint.

7. The decision reported in ***Civil Appeal No. 5909 of 2022 in SLP(C) No. 22443 of 2019 Life Insurance Corporation of India .vs. Sanjeev Builders Private Limited & another*** wherein **Para No. 70** it was held as follows.

70. Our final conclusions may be summed up thus:

(i) Order II Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview. The plea of amendment being barred under Order II Rule 2 CPC is, thus, misconceived and hence negatived.

(ii) All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word “shall”, in the latter part of Order VI Rule 17 of the CPC.

(iii) The prayer for amendment is to be allowed.

(i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and

(ii) to avoid multiplicity of proceedings, provided

- (a) the amendment does not result in injustice to the other side,*
- (b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and*
- (c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).*
- (iv) A prayer for amendment is generally required to be allowed unless*
 - (i) by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration,*
 - (ii) the amendment changes the nature of the suit,*
 - (iii) the prayer for amendment is malafide, or*
 - (iv) by the amendment, the other side loses a valid defence.*
- (v) In dealing with a prayer for amendment of pleadings, the court should avoid a hyper-technical approach, and is ordinarily required*

to be liberal especially where the opposite party can be compensated by costs.

(vi) Where the amendment would enable the court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.

(vii) Where the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation.

(viii) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.

(ix) Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.

(x) Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in

the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.

(xi) Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed. (See Vijay Gupta v. Gagninder Kr. Gandhi & Ors., 2022 SCC OnLine Del 1897)

8. The petitioner is seeking to amend the 6th defendant's name. There is no prejudice or hardship should be caused to the defendants by way of allowing to amend the name of 6th defendant. Further the defendants contended that the amount mentioned in the amendment application was not received by the defendants and so it should not be allowed to amend the plaint as per petition. Further the defendants contended that the claim is time barred one.

9. I have carefully considered the entire pleadings and submissions made by either side. Generally all pre trial amendment is to be allowed liberally. Unless an amendment is a time barred claim is sought to be introduced. Whether the facts stated in the plaint as well as facts stated in the amendment petition are true or not is to be decided after adducing evidence at the time of trial only. If any time barred claim is made and then automatically the plaintiff is not entitled to get any relief since the plaintiff claim is time barred. Considering the entire facts, this court is of the view that the petition should be allowed on condition of payment. The point is answered accordingly.

In the result, the petition is allowed on condition that the petitioners should pay Rs.10,000/- as costs to the respondents on or before 20.04.2023 failing which the petition shall stand dismissed. Call on 21.04.2023.

On 21.04.2023, cost paid. Hence the petition is allowed.

Dictated to Steno Typist, typed by her in computer, then corrected and pronounced by me in open court, on this the 21st day of April 2023.

Additional District and Sessions Judge,
Srivilliputtur.

Order in (web copy)
I.A.No.3/2022
in
O.S.139/2010
Dated : 21.04.2023
ADJ Court, SVPR.