
Padmia Vadivel Murugan Vs Gomathi Kathiresan and Others

CRP (PD) No"s. 679 and 680 of 2008 and MP. No. 1 of 2008

Court: Madras High Court (Madurai Bench)

Date of Decision: Nov. 20, 2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) – Order 6 Rule 17

Citation: (2010) 1 LW 668

Hon'ble Judges: Aruna Jagadeesan, J

Bench: Single Bench

Advocate: M. Vallinayagam, for the Appellant; K. Govindarajan, for R5 and K. Srinivasan, for R4, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Aruna Jagadeesan, J.

These Civil Revision Petitions are filed against the order dated 23.7.2007 passed in IA. Nos. 13 and 46/2007 in

OS. No. 3/2002 by the learned Additional District Court (FTC-I) Tuticorin.

2. The brief facts, which are essential for the disposal of these Civil Revision Petitions, are as follows:

a. The 1st Respondent is the sister and the Respondents 2 to 5 are the brothers of the Petitioner/3rd Defendant. The 1st Respondent/Plaintiff has

filed the above said suit for partition and separate possession of the properties, left by her deceased father Lakshman Pillai. The other Respondents

are her close relatives. Pending the trial, the Petitioner has filed an application in IA. No. 46/2006 to implead one B. Lakshmanan, son of L.

Baskaran, the 5th Defendant and S. Lakshmanan, son of L. Subramanian, the son of the 4th Defendant as the proposed Defendants in the suit.

b. According to the Petitioner, the suit item (10) of the A-Schedule property in the plaint belongs to her father S.M. Lakshman Pillai and that

property had been purchased by her father from his own funds and for his own benefit. But, the 5th Defendant claims that northern 1/2 portion of

that property belongs to his son Balaji @ Lakshmanan, the proposed 11th Defendant on the basis of a registered sale deed dated 6.9.1988 having

purchased the same out of the amounts gifted by his paternal and maternal grand father and he is in possession and enjoyment of the said property.

b. Likewise, the Petitioner claims that the property bearing S. No. 474/2 and other properties in the name of B. Lakshmanan, son of L. Baskaran

the 4th Defendant herein are the self acquired property of her father Lakshman Pillai. She has stated that her father had purchased properties in his

name and in the name of his sons and grand sons and all properties were in his possession till his life time and those properties are also liable to be

partitioned. Therefore, the Petitioner sought to implead the proposed Respondents 10 and 11 as the Defendants in order to enable the court to

effectively and completely adjudicate upon all the properties in question.

c. The 4th Defendant resisted the said application on the ground that it is the absolute and individual property of his son having purchased the same

as early as on 30.7.1983 out of the funds supplied by his maternal grand father namely Arumuga Pillai and also from birthday gifts, d. The 5th

Defendant and the proposed 11th Defendant contended that the northern half of item (10) of the A-Schedule property absolutely belonged to the

proposed 11th Defendant, having purchased the same by a registered sale deed dated 5.9.1988.

c. The Petitioner also filed another application in IA. No. 132007 to include certain properties detailed in the petition as items 19, 20, 21 and 22

as subject matter of the suit for partition. The 4th Defendant resisted the said application on the ground that the item (1) i.e. Door No. 7 does not

exist at all and the property at Door No. 73 is the absolute and individual property of the 4th Defendant. Likewise, he claimed absolute ownership

to the other three items of the properties, also having been purchased the same as early as on 30.7.1983 and as his son Lakshmanan had

established his title in OS. No. 43/1999 on the file of the District Munsif, Tuticorin, which was confirmed in A. No. 74/2005.

d. The Trial Court dismissed the said application in IA. No. 13/2007 and consequently refused to implead the son of the 4th Defendant as a party

to the suit, however, allowed the petition in IA. No. 46/2006 in part, thus impleading the son of the 5th Defendant as party Respondent/10th

Defendant, who claimed exclusive ownership to the northern portion of the item (10) of the A-Schedule property. As against the said orders, these

Civil Revision Petitions have been filed by the 3rd Defendant.

3. Mr. M. Vallinayagam, the learned Counsel for the Petitioner assailed the impugned orders of the court below on the ground that the court below

had disallowed the inclusion of properties on the sole reason that the Petitioner had not produced any documents or materials to prove that those

properties were purchased by Lakshmanan Pillai. The learned Counsel would contend that while considering as to whether an application for

amendment should or should not be allowed, the court should not go into the correctness or falsity of the case in the amendment and should not

record a finding on the merits of the case. Whereas the court below having given such a finding, the same is against the settled law and the order

passed by the court below is not sustainable in law.

4. The learned Counsel for the Petitioner placed reliance on the decision of the Honourable Supreme Court rendered in the case of Rajesh Kumar

Aggarwal and Others Vs. K.K. Modi and Others, , wherein the Honourable Supreme Court has held thus:

While considering whether an application for amendment should or should not be allowed, the court should not go into the correctness or falsity of

the case in the amendment. Likewise, it should not record a finding on the merits of the amendment and the merits of the amendment sought to be

incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer for amendment.

5. On the other hand, Mr. K. Govindarajan, the learned Counsel for the 5th Respondent would submit that a party cannot seek to amend the

pleadings of the opponent and in the instant case, the Plaintiff being the dominus litus, she cannot be compelled to include some more items of the

property, against which she did not claim any share. The learned Counsel relied on the decision of this Court rendered in the case of Ramasamy

and Anr. v. P. Marappan and Ors. 2005 3 MLJ 663 Mad.

6. The learned Counsel for the Respondents 4 and 5 also submitted that the application, filed by the Petitioner belatedly without giving any

explanation whatsoever for not having mentioned the same initially, should not be entertained at this stage and relied on the decision of the

Allahabad High Court rendered in the case of Bhu Deo Vs. District Judge and Others, , in support of the said proposition of law.

7. It is no doubt true, that a court cannot compel the Plaintiff to amend the plaint at the instance of the Defendant in a partition suit by including or

excluding some properties and also impleadment of parties. But, at the same time, it is only the Plaintiff who can complain of such compulsion and

it is not open to the other Defendants to complain that the court has no jurisdiction to compel the Plaintiff to do so.

8. In the instant case, admittedly the 1st Respondent/Plaintiff has not filed any counter or objection to the said applications before the court below

nor raised any objections in these Civil Revision Petitions. The suit is one for partition and it is the case of the Petitioner that some more properties

which stand in the name of the sons of the 4th and 5th Defendants herein were purchased by her father late Lakshman Pillai and the Plaintiff has

failed to include those properties and seeks to include those properties for adjudication. Simply because there is a delay, the Petitioner cannot be

denied a just relief on the ground that it is not in conformity with the rules of procedure.

9. Order 6 Rule 17 of CPC does not interdict an amendment which adds new reliefs unless it causes injustice to the other party. The proposed

amendment does not constitute an addition of a new cause of action, but it amounts to no more than adding to the facts already on the record. The

amendment sought for in this suit for partition is not in any way alter or affect the original suit filed by the Plaintiff or introduce any new case, but

seeks to include certain other properties which stand in the name of the proposed Defendant. In other words, it can only be said that it is an

expansion of pleas already placed on record.

10. It is to be borne in mind the various pronouncements of the Honourable Supreme Court that the general rule in the matter of allowing

amendment is that all amendments are to be allowed which do not purport to set up a new case and which would not work injustice to the other

side are necessary for the purpose of determining the real question in controversy between the parties. One of the purposes and objects of

allowing amendments of the plaint in the case of this nature is to avoid multiplicity of proceedings.

11. That apart, in an application for an amendment of a plaint, the court has no power to consider the merits of the proposed amendment. Order 6

Rule 17 of CPC confers a wide discretion upon the courts to allow the amendment of pleadings at any stage of the proceedings, if it goes to help

the court in deciding the issue between the parties in a just and fair manner. It is also well settled law that however late the proposed amendment,

the same can be allowed, if it causes no injustice to the other side.

12. In the instant case, the court below had allowed the amendment in part and is not justified in refusing the other part merely on the ground that

there is no proof to support the claim of the Petitioner that they are the self-acquired properties of her father. As already discussed above and in

view of the law laid by the Honourable Supreme Court that the court should not go into the correctness of falsity of the case in the amendment, the

impugned orders passed by the court below are unsustainable in law and they are liable to be set aside and accordingly, they are set aside.

13. In the result, these Civil Revision Petitions are allowed. No costs. Consequently, the connected MP is closed.