

## 1. P. Sivasubramanian, 2. S. Venkatesan Vs 1. R. Saravanan, 2. R. Venkatesh

**Court:** Madras High Court

**Date of Decision:** Sept. 18, 2009

**Acts Referred:** Civil Procedure Code, 1908 (CPC) â€” Order 6 Rule 17

**Citation:** (2010) 1 MLJ 510

**Hon'ble Judges:** Aruna Jagadeesan, J

**Bench:** Single Bench

**Advocate:** M. Ajmalkhan, for the Appellant; P. Muthuvijayapandian, for the Respondent

**Final Decision:** Allowed

### Judgement

@JUDGMENTTAG-ORDER

Aruna Jagadeesan, J.

This Civil Revision Petition is filed by the plaintiffs against order dated 22.6.2007 passed in IA.No.68/2007 in

OS.No. 167/2006 by the District Munsif, Periyakulam. The brief facts are as follows:-

The petitioners/plaintiffs filed the above said suit for permanent injunction restraining the respondents/defendants from interfering with their peaceful

possession of the suit property. The petitioners claim title to the suit property by virtue of the registered sale deed dated 3.6.1982 and claim to be

in possession and enjoyment of the suit property. The respondents filed a written statement disputing the title of the petitioners to the suit property,

which necessitated the petitioners to file an application in IA.No.68/2008 under Order 6 Rule 17 of CPC for amendment of the plaint seeking

declaratory relief in view of the stand taken by the respondents in the written statement. The said application has been resisted by the respondents

contending that they would be prejudiced if such an amendment is allowed. The court below dismissed the said application on the ground that if

such an amendment is allowed, it would introduce a new cause of action and change the character of the suit. Aggrieved against the said order, this

Civil Revision Petition has been filed by the plaintiffs.

2. Mr. M. Ajmalkhan, the learned counsel for the petitioner would contend that the amendment sought for is a pre trial amendment and the court

below ought to have taken a liberal approach and by allowing such an amendment, no new cause of action would be introduced nor the character

of the suit would be changed. He would rely upon the decision of this court rendered in similar circumstances in the case of Kalavathi Vs. Chitra

1998-1-CTC-529 wherein this court has held that an amendment not changing the nature of the suit and not affecting the rights of the parties has to

be allowed in the interest of the parties concerned. That is also a case where the defendant disputed the title of the plaintiff, which necessitated the

plaintiff to seek for an amendment of the plaint filed originally for permanent injunction and this court allowed such an amendment holding that the

amendment would not result in change of cause of action and no prejudice is likely to be caused to the other party.

3. In the instant case, all the facts and circumstances which would have entitled the plaintiff to claim declaration of right in question have been

pleaded in the plaint and therefore, it cannot be said that the respondents would be prejudiced in the event of allowing such an amendment. It is an

amendment which does not constitute an addition of new cause of action or raise a different issue, but merely a different approach to the same

facts.

4. In the case of Amar Singh Chettri Vs. Bijay Chandra Modak and others AIR-1993-Gouhati-50, the suit was filed for declaration and permanent

injunction and when the defendant trespassed into the property during the pendency of the suit, conversion of the plaint was sought for into one for

declaration and recovery of possession. On the said facts, the High Court of Gouhati held that no prejudice or irreparable injury was likely to be

caused to the defendant and the amendment was necessary to adjudicate the real issue between the parties.

5. In another decision rendered in the case of Abdul Hannan Khan and others Vs. Chandra Sekhar Patra and others AIR-1986-Orissa-236, the

facts are more or less similar to that of this case that the suit was filed for permanent injunction and the defendant had pleaded title and possession

and hence amendment of the plaint was sought for including the title of the plaintiff and prayer for possession and it was held that the amendment

should be allowed as the nature of the suit would not be changed and the defendant would not be prejudiced.

6. The main object of Order 6 Rule 17 of CPC is that the courts should get at and try the merits of the case that comes before them and should

consequently allow all amendments that may be necessary for determining the real question in controversy between the parties without causing

injustice to the other side.

7. It has been held by the Honourable Supreme Court in the case of Haridas Girdharidas and others Vs. Vasadaraja Pillai and another AIR-1971-

SC-2366 = (1971) 84 L.W. 107 S.N. that the rule of conduct of the court is that ""however negligent or careless the first omission may have been,

and however late the proposed amendment, the amendment should be allowed if it can be made without injustice to the other side."" In the said

decision, in a suit for possession, the plaintiff applied to amend the pleadings and it was held that no prejudice was being caused to the opposite

party and the relief claimed also was within the period of limitation.

8. Therefore, it is well settled that under Order 6 Rule 17 of CPC, a court of law trying the suit has very wide powers, in the matter of allowing

amendments of pleadings and all amendments which will aid the court in disposing of the matters in dispute between the parties are as a rule

allowed subject to the law of limitation. So, it is a duty which has been cast upon the courts so that the substantial justice may be done for which

alone the court exists. The provisions of Order 6 Rule 17 of CPC have been included to do justice and not to shut out justice merely on

technicality of pleadings.

9. In view of the aforesaid reasons, the impugned order passed by the court below dismissing the application for amendment cannot be sustained

and accordingly, it is set aside. In the result, this Civil Revision Petition is allowed. No costs.