

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.3.2005

CORAM

THE HONOURABLE Mr.JUSTICE N.KANNADASAN

CIVIL REVISION PETITION (NPD)NO.2494 of 2004 and
C.M.P.Nos.18738 of 2004 & V.C.M.P.No.20806 of 2004

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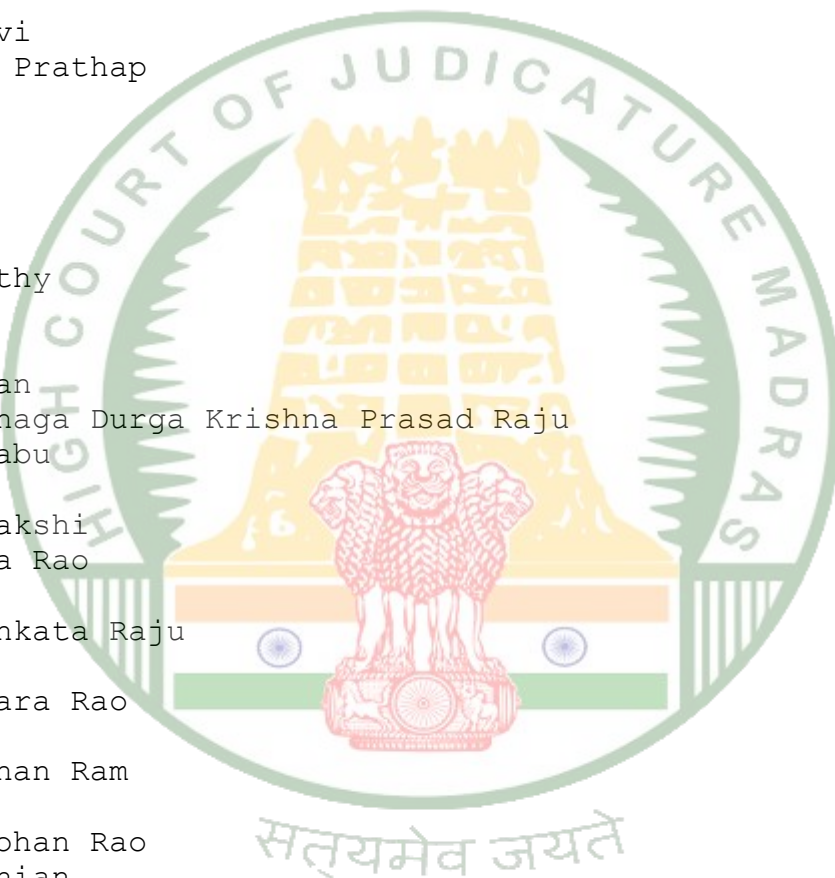
Ramesh Ramanujam S/o.V.R.Seshadri,
residing at No.47,Venkatadri Naicken
Street, Kosapet, Chennai-600 012 for
himself and representing:

- 1.Subramanian
- 2.Mrs.Mauthanammal
- 3.Samson Haffton
- 4.Chandrasekaran
- 5.J.Prabakaran
- 6.V.Pounabai
- 7.M.Balakrishnan
- 8.Vegesana Suryanarayana Raju
- 9.Kunapa Raju Venkatasoma Raju
- 10.M.Arokiasami
- 11.Mrs.Ranjith ammal
- 12.N.Balasundaram
- 13.Sankaranayanan
- 14.Mrs.T.J.Susila Devi
- 15.Dhanapal
- 16.Manoharan
- 17.Mrs.Meera
- 18.Mrs.Indira
- 19.Seetharaman
- 20.G.Vasantha
- 21.D.Bhaskaran
- 22.B.Subramanian
- 23.D.Subramanian
- 24.Natarajan
- 25.Pappaiyan
- 26.Chandra Ramachandran
- 27.M.Ganapathy
- 28.Chinnammal
- 29.Thiruneelakandan
- 30.Mrs.Bhavathiammal
- 31.Mrs.Jaya Rajagopal
- 32.Kannan
- 33.Mrs.Mada Leelavathamma
- 34.Mrs.Lakshmi Tulasi



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35.Mathusudanan
36.Dr.Easwari Amma
37.M,Rangarajan
38.Mrs.Kamatchi
39.Vaidyanathan
40.Mrs.Rani
41.Mrs.Anusuya
42.Mrs.Ansari
43.T.J.Ganesh Babu
44.Krishnan
45.Sakthivel
46.Subramanian
47.Shankari Ravi
48.Dr.Savithri Prathap
49.C.S.Mani
50.Natarajan
51.Suseela
52.Sudharsanan
53.Mrs.Rajam
54.R.Lakshmipathy
55.Subramanian
56.Sigappi
57.Dr.S.Madhavan
58.Vegesana Kanaga Durga Krishna Prasad Raju
59.Venkatesh Babu
60.Visalakshi
61.Mrs.P.Visalakshi
62.Venkateswara Rao
63.R.Veerasingam
64.Vegesana Venkata Raju
65.Munuswami
66.Nama Nageswara Rao
67.V.Natarajan
68.Kausalya Mohan Ram
69.Ramaswamy
70.Mitta Ram Mohan Rao
71.Balasubramanian
72.Mrs.T.Lakshmi
73.Mrs.Chakka Uma Devi
74.Mrs.Pappayee
75.Mrs.Mangalam
76.Narayanan
77.Mrs.P.Visalakshi
78.Gopi
79.Vivekanandan
80.Krishnaveni Ammal
81.Ramakrishnaiah
82.P.S.Prakash
83.T.A.Jayalakshmi



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84.P.Suryanarayana Gupta
85.Krishnaveni Ammal

... Petitioners

-vs.-

1.Varadammal
2.Siyathammal
3.Nemichand Sowcar
4.S.V.Raju
5.R.Pushpalatha
6.R.Chandravadhana
7.R.Lakshmi

(Respondents 3 to 7 given up) ... Respondents

Revision petition filed under Section 115 CPC against the fair and decretal orders dated 23.7.2004 passed by the VI Addl.Judge, City Civil Court, Chennai in C.M.P.No.615 of 2004 in A.S.No.36 of 2003.

For petitioners ...Mr.M.Balasubramanian
For respondents ...Mr.R.Viduthalai

ORDER

The above revision is filed challenging the order dated 23.7.2004 passed by the VI Addl.Judge, City Civil Court, Chennai in C.M.P.No.615 of 2004 in A.S.No.36 of 2003 rejecting the application filed by the petitioners herein seeking to amend the plaint.

2. The petitioners herein have filed a suit in O.S.No.4589 of 1990 on the file of the First Assistant City Civil Court, Chennai claiming the relief for a permanent injunction restraining the defendants 1 and 2 from interfering with the peaceful possession and enjoyment of the plaintiffs of the suit B schedule property. The suit was dismissed on 19.9.2002. One of the reasons among the other reasons for the dismissal of the suit was that the plaintiffs have not chosen to claim declaration of title in the suit property. Under the said circumstances, the application to amend the plaint was filed during the pendency of the appeal in A.S.No.36 of 2003. Even though the appeal was filed during the month of December, 2002, but later on numbered as A.S.No.36 of 2003. The subsequent application seeking amendment under Order 6 Rule 17 CPC was filed on 5.4.2004, which was dismissed, against which the above revision has been filed.

3. Learned counsel for the petitioners would contend that the plaintiffs are possessed with voluminous documentary evidence right from the year 1950 onwards and inasmuch as the

trial court has dismissed the suit on the ground that there was no prayer seeking declaration of the title, they should be permitted to amend the plaint, since it would not cause any prejudice to the respondents herein. Accordingly, to avoid the multiplicity of the proceedings, the court below ought to have permitted the petitioners herein to amend the plaint. Inasmuch as no new cause of action arose and no prejudice would be caused to the respondents and considering the fact that the Apex Court has rendered various decisions to the effect that the party should be permitted to amend the pleadings to avoid multiplicity of the proceedings, the order rejecting the application filed by the petitioners is unsustainable in law. Learned counsel would also add that even though the present application has been filed subsequent to the amendment, which came into effect on 1.7.2002 under Order 6 Rule 17 CPC, the position of law is not altered and as such the plaintiffs are entitled to amend the plaint during the pendency of the appeal. It is also contended that the appeal filed by the plaintiffs is nothing, but a continuation of the proceedings already instituted by way of suit and as such there is no embargo on the plaintiffs to amend the plaint even at the stage of appeal.

4. Learned counsel also contended that there are as many as 85 persons fighting for their valuable rights with regard to the fact in question and as such their application for the amendment should not be rejected on mere technicalities.

5. Learned counsel for the respondents would contend that even though as per the decision of the Apex Court, liberal approach should be adopted in the matter of amending the pleadings, inasmuch as an amendment of CPC came into effect on 1.7.2002, pertaining to Order 6 Rule 17 CPC, the same shall not be permitted after the disposal of the suit. Learned counsel further submits that the Legislature introduced the amendment to avoid frivolous petitions and as such the amendment should not be permitted after the disposal of the suit. Learned counsel would contend that even during the pendency of the trial, if an amendment has to be permitted after the commencement of the trial, the Court has to be satisfied as to why the amendment could not be effected prior to the commencement of the trial.

6. I have considered the rival submissions of both the parties.

7. It is not in dispute that the application seeking amendment of the plaint is filed by the plaintiffs on the basis of the facts, the knowledge of which were available with the plaintiffs even during the pendency of the suit. Inasmuch as the suit was filed as early as in the year 1990, though the written

statement who filed later on during the year 2002 and the trial commenced and completed and judgment was pronounced on 19.9.2002, no valuable explanation was adduced for filing such an application belatedly.

8. As regards the jurisdiction to entertain the amendment petition during the pendency of the appeal, it is useful to refer the relevant provisions under Order 6 Rule 17 CPC prior to the amendment, which runs as follows:-

"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 question in controversy between the parties."

(Emphasis supplied by the Court)

The relevant provision under Order 6 Rule 17 CPC after the amendment, is as follows:-

"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."

From the perusal of the provision viz., Order 6 Rule 17 CPC prior to the amendment, it is clear that there is no embargo upon the Courts to entertain the applications seeking to amend the pleadings after the commencement of the trial or otherwise. The said provision clearly proceeds to the effect that the amendment can be ordered "at any stage of the proceedings" for the purpose of determining the "real question in controversy between the parties". In the light of the above, the amendments were permitted at any stage to avoid multiplicity of proceedings.

9. However, after the amendment of the said provision on and from 1.7.2002 as per Amendment Act Central Act 46 of 1999, the legislature thought it fit to introduce a proviso to Rule 17. The said proviso contemplates two stages viz., application which can be filed prior to the commencement of the trial and after the commencement of the trial. Since the amendment itself restricts about pre-trial and post-trial stages, the intention of the

legislature is very clear that no application seeking amendment of the pleadings is permissible after the completion of the trial. The said amendment seems to have been made with a view to prevent parties to the proceedings to approach the Courts seeking necessary amendment of the pleadings at the earliest stage, so as to avoid frivolous petitions being filed at any stage of the proceedings. That is the reason as to why the above provision is amended in such a manner that a party should not be permitted to file an application for amendment after the commencement of the trial, except in the circumstances, he is able to satisfy the Court to the effect that in spite of due diligence, he could not have raised the matter before the commencement of trial.

10. In fact this court while dealing with the similar issue in the decision reported in GUNASEELAN, T v. M. THAMILSELVI (2004(5)CTC729) has considered the scope of Order 6 Rule 17 in the light of decisions of the Apex Court. As per the earlier decisions of the Apex Court that pre-trial amendments are to be allowed more liberally than those which are sought to be made after the commencement of the trial unless the parties are able to establish that the amendment of pleadings are absolutely necessary. The above decision of this Court makes it clear that there are only two stages in permitting the parties to amend the pleadings viz., pre-trial stage and post-trial stage.

11. This court in another decision reported in SUBBA NAICKER, P. v. VELUCHAMY NAICKER (2004(1)CTC742) has taken the view that the application for amendment after the commencement of trial cannot be entertained liberally and unless the court is satisfied, such amendment should not be permitted.

12. In the light of the various decisions rendered by the Apex Court and this Court, while interpreting Order 6 Rule 17 prior to amendment, it is clear that though liberal approach can be made in permitting the amendment prior to the commencement of the trial, after the commencement of the trial, the party seeking amendment of the pleadings is expected to adduce necessary materials as to why he was not able to make necessary pleadings at the prior point of time. No decision of this Court as well as the Apex Court is placed before me to the effect that amendments can be permitted even after the disposal of the suit, subsequent to the amendment of CPC with effect from 1.7.2002.

13. By analysing the settled principles of law with reference to the provision viz., Order 6 Rule 17, prior to the amendment as well as the subsequent amendment, I am of the opinion that the amendment of pleadings is not permissible in law after the completion of trial.

14. For the reasons stated above, I do not see any reason to interfere with the order of the Court below and hence the civil revision petition is dismissed. Consequently, no orders are necessary in C.M.P. Nos.18738 of 2004 & V.C.M.P.No.20806 of 2004 and they are closed.

tsv.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Registrar,
City Civil Court,
Chennai

2. The Record Keeper
VR Section, High Court,
Madras.

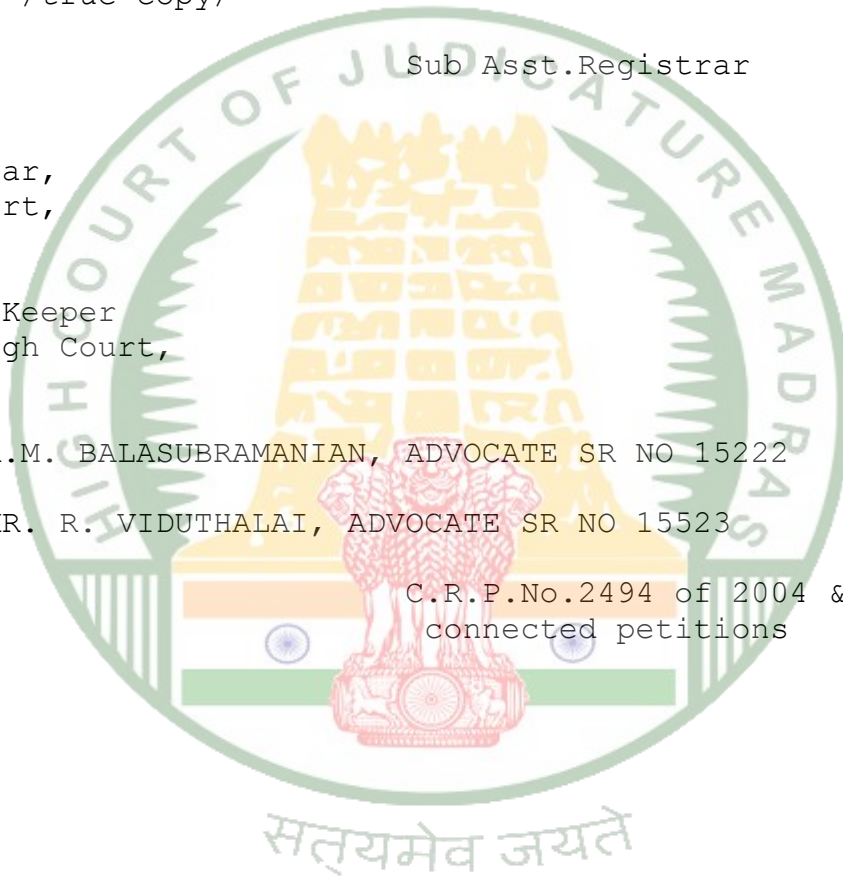
+ ONE CC TO MR.M. BALASUBRAMANIAN, ADVOCATE SR NO 15222

+ ONE CC TO; MR. R. VIDUTHALAI, ADVOCATE SR NO 15523

C.R.P.No.2494 of 2004 &
connected petitions

PV (CO)

BP/18.4



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