

D.Lalitha Vs. Rangasan

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Court : Chennai

Decided On : Jul-03-2013

Judge : K.Ravichandrabaabu

Appellant : D.Lalitha

Respondent : Rangasan

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED :

03. 07.2013 Coram The Hon'ble Mr. Justice K.RAVICHANDRABAABU
C.R.P.(NPD) No.3546 of 2010 and M.P.No.1 of 2010 1. D.Lalitha 2. Rathinammal
3. Pushpa .. Petitioners Vs 1. Rangasan 2. The Deputy Registrar Cheyyaru Taluk
Thiruvannamalai District.

3. The Sub-Registrar Sub Registrar Office, Dusi Cheyyaru Taluk Thiruvannamalai
District. .. Respondents Civil Revision Petition filed against the order and dated
8.9.2010 made in I.A.No.12 of 2010 in A.S.No.22 of 2009 on the file of the District
Judge, Thiruvannamalai. For Petitioner : Mr.D.Rajendran For Respondent : Mr.
R.Rajarajan (R1) No appearance for R2 and R3

ORDER

The above Civil Revision Petition is filed against an order made in I.A.No.12 of
2010 in A.S.No.22 of 2009 dated 8.9.2010 rejecting the said application seeking
for amendment of the plaint.

2. The petitioners as the plaintiffs filed O.S.No.65 of 2007 on the file of Sub-Court, Cheyyar against the first respondent herein for partition. The petitioners are sisters and the first respondent is their brother. The second and third respondents are official respondents who have been arrayed as formal parties. The plaintiffs pleaded that the suit properties consisting of three items belonged to their mother by name Kannammal, who died 15 years ago leaving behind the plaintiffs and the first defendant as her legal heirs . Therefore, they sought for partition by claiming 1/4th share each in the suit properties. They also specifically pleaded that insofar as the properties that stood in the name of their father by name Appu Naidu are concerned, they were not seeking any share in those properties and they had given up their rights over the said properties left by their late father in favour of the first respondent.

3. The first respondent filed a written statement and contested the suit. It is his specific plea that item No.3 of the suit schedule belonged to his father Appu Naidu and after his death he acquired the property over which their mother did not have any right. Insofar as item No.2 is concerned, it is his contention that his mother Kannammal executed a settlement deed dated 5.9.1959 in his favour and therefore the plaintiffs are not having any right to claim share in the said property.

4. The trial court after considering the respective pleadings of the parties and the evidence let in by both sides, dismissed the suit on 31.8.2009. Aggrieved against the same, the plaintiffs / petitioners herein filed first appeal in A.S.No.22 of 2009 on the file of the District Court, Thiruvannamalai. During the pendency of the first appeal, the first petitioner herein filed I.A.No.12 of 2010 seeking for amendment of the plaint under Order 6 Rule 17 CPC.

5. It is her contention that at the time of filing the suit, the plaintiffs have instructed their counsel, by inadvertence, as if the suit properties belonged to their mother Kannammal and after her demise all are equally entitled for 1/4th share each in the suit properties. However, only after filing of the first appeal, they came to understand that 2nd item of the property alone belonged to their mother and items 1 and 3 belonged to their father Appu Naidu.

6. It is further contended that the trial Court dismissed the suit by holding that the plaintiffs have no share over the properties belonging to their father. Consequently, she sought to amend the plaint to contend that suit items 1 and 3 belonged to their father Appu Naidu and suit Item 2 belonged to their mother Kannammal. She also sought to delete paragraph No.9 of the original plaint by substituting the averments that the plaintiffs and the first defendant are entitled to 1/4th share in the properties of their father and mother. The said application for amendment was resisted by the first respondent.

7. The Court below after considering the rival pleadings and after hearing both side, dismissed the said application by observing that the amendment would alter the basic structure of the suit and that the new plea sought to be introduced is diametrically opposite to the earlier plea. Aggrieved against the said order, the present Civil Revision Petition is filed by the plaintiffs.

8. Heard the learned counsel for the petitioners as well as the first respondent.

9. The learned counsel for the petitioners submitted that by way of amendment, no new item is introduced or the quantum of share is altered . Therefore, no new case is introduced. The merits of the amendment can not be gone into by the Court below while considering the application under Order 6 Rule 17 CPC. He further submitted that the petitioners are also entitled to a share in their father's properties even though he died in the year 1950, because at the time of his death their mother was alive. Therefore, their mother's share derived from their father's property automatically devolves on the petitioners. He further submitted that these issues can be gone into only at the time of hearing the main appeal and therefore allowing the amendment would not prejudice the other side.

10. In support of his submissions , the learned counsel for the petitioners relied on the decision of the Apex Court reported in Rajesh Kumar Aggarwal and Others Vs. K.K.Modi and Others (2006 (4) SCC385 to contend that merits of the facts stated in the amendment petition cannot be gone into at the time of hearing the application.

11. He further relied on the decision made in Abdul Rehman and Another Vs. Mhd. Ruldu and Others (2012(9) SCALE582 to contend that the amendment should be construed liberally .

12. He also relied on the decision of the Apex Court in the case of Rameshkumar Agarwal Vs. Rajmala Exports Private Limited and others (2012 (5) SCC337 to contend that Court should adopt liberal approach while considering the amendment applications.

13. Per contra, the learned counsel appearing for the first respondent submitted that the proposed amendment is bringing totally a new case and a new cause of action. It also introduces an inconsistent plea. The father of the first respondent and plaintiffs namely, Appu Naidu died in the year 1950 and the first respondent got his right in the year 1950 itself. Therefore, claiming a share in the father's property that too after such a long time, is certainly a new cause of action, which cannot be permitted by way of amendment .

14. I have considered the rival submissions made by the respective learned counsels.

15. In this case, the petitioners as plaintiffs filed a suit for partition claiming 1/4th share in the suit properties by contending that those properties belonged to their mother Kannammal. It was specifically pleaded by them at paragraph 9 of the plaint that insofar as the properties belonged to their father which were left in the hands of the first defendant are concerned, they were not claiming any share in the said properties and they had given up their rights over the said properties in favour of the first defendant, magnanimously. After saying so in the plaint, and having failed to succeed in the suit before the trial Court, the third plaintiff alone filed an appeal before the first appellate Court and during the pendency of the appeal, the present application for amendment was filed by the third plaintiff/first petitioner herein. The third plaintiff by way of amendment seeks to contend that suit items 1 and 3 belonged to her father and only item 2 belonged to her mother. She also wants to delete paragraph No.9 wherein the plaintiffs have originally stated that in respect of the properties belonged to their father, they were not claiming any share and they had given up their right in favour of the first

defendant. Having said so by all the plaintiffs, now the third plaintiff alone wants to delete that paragraph and introduce a new paragraph by contending that the plaintiffs are entitled to a share in their father's properties as well. Undoubtedly, such a plea sought to be introduced by the third plaintiff, is not only a new plea and also an inconsistent plea. Amendment of pleadings can be sought for either to elucidate the facts already in existence or to add further facts which are not inconsistent with the original plea. Certainly an inconsistent plea cannot be permitted to be introduced by way of amendment, more so, when such plea is certainly not an alternative plea. When the plaintiffs have specifically stated that they were not claiming any share in their father's property and they had given up their right in favour of the first defendant, now the third plaintiff cannot turn around and say that the plaintiffs are entitled to 1/4th share in their father's properties as well and seek for amendment of the plaint to that respect.

16. No doubt, the Court may not go so deep into the merits of the claim made in the amendment but at the same time the Court is not precluded from finding out as to whether the amendment sought to be made introduces an inconsistent plea. If the court comes to the conclusion that an inconsistent plea is sought to be introduced by way of amendment, certainly it is within its power to reject the amendment petition as the plaintiffs are not entitled to bring out a new case or plea or new cause of action under the guise of amendment that too when such new case or plea is totally inconsistent with the original plea.

17. The learned counsel for the petitioners relied on the decisions reported in in Abdul Rehman and Another Vs. Mhd. Ruldu and Others (2012(9) SCALE582 and Rameshkumar Agarwal Vs. Rajmala Exports Private Limited and others (2012 (5) SCC337 to contend that the amendment should be construed liberally. There is no quarrel about the said proposition. No doubt the Court should liberally construe the plea for amendment. At the same time, it is also the duty of the Court to prevent parties from bringing in a new case or plea or inconsistency under the guise of amendment, that too at the appellate stage after having lost the battle before the trial Court, based on the original pleadings. Liberal construction or approach does not mean that a person can be permitted to take an inconsistent plea or to revive a right which was given up originally. Certainly by way of

amendment, a given up right cannot be revived. If such amendment is permitted, it not only goes against the scope and ambit of Order 6 Rule 17 CPC but also against the interest of the other side, who by that time has got accrued a right in pursuant to the decision of the trial Court rendered based on the original pleadings of the parties.

18. Likewise, the other decision reported in *Rajesh Kumar Aggarwal and Others Vs. K.K.Modi and Others* (2006 (4) SCC385) is also relied on by the learned counsel for the petitioners to contend that the correctness or falsity of the case in the amendment, need not be gone into by the court at the stage of considering the prayer for amendment. It is true that the Apex Court in the said decision has observed that the real controversy test is the basic or cardinal test and it is the primary duty of the Court to decide whether such an amendment is necessary to decide the real dispute between the parties and should not go into correctness or falsity of the case in the amendment and record a finding on the merits of the amendment at the stage of considering the prayer for amendment. In this case, the correctness or otherwise of the amendment sought to be introduced was not gone into by the Court and on the other hand, such statement made in the amendment had been found as inconsistent statement as against the original pleading made in the plaint. Such inconsistency is evident on the face of the pleadings itself. Therefore, I am of the view that the above said decision cannot be relied on by the learned counsel for the petitioners as the facts and circumstances of the case before the Hon'ble Supreme Court are factually distinguishable. The facts of the present case, as discussed supra, would disclose that the plaintiffs are seeking for deletion of paragraph No.9 of the original plaint and seek to introduce a plea totally contradictory to the earlier pleadings. Therefore, though the Court need not go into the correctness or the falsity of the case in the amendment, when it is obvious on the face of the application that the plaintiffs are trying to bring in a new and inconsistent case, nothing wrong in rejecting the application.

19. The Court below has rightly rejected the application by holding that the proposed amendment is introducing a new plea which is diametrically opposite to the earlier plea and that consequently changes the very basic structure of the plaint. The Court below has also found that such amendment sought for is contrary

to the pre-notice issued by the third plaintiff and her evidence in the chief examination as well as the suggestion put in during the cross examination of the defendant. 20 Yet another vital aspect of the matter is also to be taken note of in this case. Though the suit was filed by the three plaintiffs only the third plaintiff has filed the appeal before the first appellate court by showing the other plaintiffs, viz., 1 and 2 as respondents 4 and 5. Thus, it is clear and evident that the plaintiffs 1 and 2 did not challenge the decision of the trial Court. When all the plaintiffs had joined together and filed a suit and contested the same by taking a common stand and pleading, whether one of the parties alone can seek for amendment of the plaint is yet another question needs to be answered. A pleading is the statement of facts of the case as projected by the person/persons, who make such statement. Thus, when a statement of facts is made jointly as a common pleading by two or more persons as plaintiffs or defendants, any amendment of such pleading can be sought for only by all of them together and not by any one of them. Otherwise, it would be construed wrongly that a joint statement made by several persons can be altered or amended at the instance of any one of them. Needless to say that pleadings can be amended only at the instance of person/ persons who made it originally and not at the instance of any one of them. In this case, the Court below has observed the petitioners 2 and 3 herein/respondents 4 and 5 therein (who are the plaintiffs 1 and 2) have not filed any counter and they remained exparte. However, in the typed set of papers filed in this C.R.P , a copy of the counter by the 1st plaintiff and adopted by the second plaintiff is filed. When it is the specific finding of the Court below that no counter affidavit was filed by the 1st and 2nd plaintiffs, placing the same in the typed set of papers would serve no purpose and cannot be accepted as if such counter affidavit was filed before the court below. Even assuming that such counter was filed before the Court below, a perusal of the same would only disclose the strange attitude of the 1st and 2nd plaintiffs. The first and second plaintiffs, who were shown as fourth and fifth respondents in the appeal, oppose the amendment by specifically stating that the amendment petition is false, frivolous, vexatious and unsustainable either in law or on facts and the same deserves to be dismissed in limini. However after saying so in the first paragraph, they supported the case of the petitioner therein in other paragraphs and consequently prayed at the last paragraph for allowing the amendment

petition. I am totally surprised to see the conduct of the respondents 4 and 5 in this aspect. At any event, as the Court below has observed that they have not filed any counter, I am not saying anything more on the statement made in counter of the respondents 4 and 5, which is filed in the typed set of papers. Further, when admittedly, the first petitioner alone filed the amendment petition and got it dismissed, it is not known as to how this Civil Revision Petition is filed by all the plaintiffs together.

21. At this juncture, it is useful to refer to the decision of the Apex Court reported in 2009 (3) SCC467(Alkapuri Cooperative Housing Society Limited Vs. Jayantibhai Naginbhai) wherein it was observed that an application for amendment of the plaint seeking to introduce a cause of action which had arisen during the pendency of the suit stands on a different footing than the one which had arisen prior to the date of institution and that the respondent/ plaintiffs in effect and substance sought to alter the basic structure of the suit is impermissible. Likewise, a learned single Judge of this Court in a decision reported in 1999(3) MLJ379(Gurusamy Gounder Vs. Muthusamy Gounder and others) has held that amendment of plaint to insert contrary averments in the place of admissions in the plaint cannot be allowed.

22. Thus, considering all these facts and circumstances, and also the case laws as discussed supra, I am of the view that the order of the Court below in dismissing the amendment petition does not warrant any interference by this Court. Accordingly, the Civil Revision Petition is dismissed. Consequently, the connected M.P. is closed. No costs. krr/ To The District Judge Thiruvannamalai

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