

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.8495 OF 2019
(@ out of SLP (C) No.11446/2019)

O. KUPPUSAMY

Appellant(s)

VERSUS

V. EKAMBARAM & ORS.

Respondent(s)

O R D E R

Leave granted.

This appeal challenges the judgment and order dated 9.1.2019, passed by the High Court of Judicature at Madras in C.R.P. (PD) No.4551/2013.

The matter arises out of Original Suit No.351 of 2008 filed by the respondents herein on the file of District Munsif Court, Tiruvallur.

In Para 4 of the plaint of said Suit, it was asserted:-

“(4) Plaintiffs state that items 1 and 2 of the suit schedule has been purchased by the plaintiffs father under a Registered Sale Deed dated 20.12.1975 and Item-3 under a Sale Deed dated 12.09.1962. The Original Sale Deed dated 20.12.1975 in respect of suit items 1 and 2 has been pledged along with other title deeds to State Bank of India (Agriculture Development Branch) Thiruvallur while availing a loan. The fact that the Sale Deed dated 20.12.1975 has been pledged with the Bank is evidenced by the Legal Opinion dated 26.8.1999. Item 4 of the suit schedule has also been purchased orally by the plaintiffs father for a sum of Rs.1,200/- (Rupees one thousand two hundred only) during the 3rd week of Masi Month of 1982 from C. Boli Chetty, S/o Chinna Kutty Chetty followed by delivery of possession. From the date of purchase of the respective properties, plaintiffs father was in absolute possession and enjoyment of the suit schedule mentioned properties till he died on 23.4.1996. Patta for the suit items was granted to the plaintiffs father as early as in 1987 during the U.D.R. period followed by issuance of a Computer patta

in Patta No.506. Kist was also paid by the plaintiff."

The relief claimed in the suit was in the nature of declaration that the plaintiffs had right and title over the suit properties and the Schedule of Property was as under:

"SCHEDULE OF PROPERTY

At Thiruvallur District, Thiruvallur Taluk,
Pullarambakkam Village:

		<u>KIST</u>	
1	Punjai; Survey No.331/6	...0.07.0 Hectares.	0.13
2.	Punjai; Survey No.331/3	...0.08.0 Hectares.	0.15
3.	Punjai; Survey No.331/15	...0.13.0 Hectares.	0.24
4.	Punjai; Survey No.331/9	...0.25.0 Hectares.	0.47
			0.99

The suit was filed sometime in the year 2008 and in his written statement filed in February, 2009 to the plaintiff, the present appellant stated:-

"10. This defendant submits that from the averments in the plaint it is crystal clear that there is no problem with regard to item 1 to 3. With an intention to grab the item No.4, the plaintiff's want only included the Survey Number by stating that they have purchased it orally in the year 1982. It is stated that it has been purchased by the plaintiff for Rs.200/-. As per the Registration Act when the value of the property fetches more than hundred rupees it has to be compulsorily registered. That too at the time of the alleged purchase the value of the property is more. The suit village is - adjacent to the Tiruvallur Town and the Market value of the property is higher even at that period also. Actually, the plaintiffs had bluffed that he had purchased the property in the third week of Masi 1982 from Poli Chettiar. But, the said Poli Chettiar who is the grand-father of this defendant died in the year 1924 itself. Further, this defendant's father also died in the year 1953 leaving this defendant as the only legal heir to succeed the property. When this defendant not sold the property the plaintiff deliberately misrepresented the case before

this Hon'ble Court on the created cause of action. The plaintiff have burked the truth and actually the plaintiffs who are the land grabbers in the locality want only included the Survey No.331/9 with other properties and filed the suit in a vexatious manner. For this aspect itself the suit has to be dismissed in limine."

In substance the response of the appellant as regards item (iv) property was;

(a) The Purchase of said immovable property in the Schedule was not under any document which was registered. Such transaction is impermissible in law.

(b) The market value of the property was higher.

(c) The day the property was allegedly purchased, Poli Chetty, grant-father of the defendant was not alive. He had died in the year 1924 itself.

Three years after that the aforesaid stand was taken in the written statement, an application under Order VI Rule 17 of CPC seeking amendment to the plaint was filed by the present respondent. The particulars of amendment were stated in the application as:

"Particulars of amendment

1. Delete '1982" occurred in 11th Sentence of Para 4 of the Plaint and Substitute "1949").
2. Delete "C. Boli Chetty, S/o Chinna Kutty Chetty" occurred in 11th and 12th sentence of Para 4 of the Plaint and substitute "P. Othaiyappa Chetty", s/o C. Boli Chetty."

The nature of amendment sought in the present matter was thus to the effect that instead of C. Boli Chetty, S/o Chinna Kutty Chetty it was P. Othaiyappa Chetty s/o C. Boli Chetty who entered into the transaction and transaction was not in the year 1982 but

in the year 1949.

The ground in support of the application seeking amendment was that through inadvertent mistake, the name of the person concerned and the order of transaction were wrongly mentioned in the original plaint. The application was not accepted by the trial court and by order dated 18.3.2012, it was rejected. The matter was carried in revision before the High Court and by order presently under appeal the High Court allowed said revision petition.

The observations touching upon the controversy in question were as under:

"11. In the instant case, it is the case of the petitioners that only due to inadvertence, the year of purchase was wrongly mentioned and the name of the purchaser was also wrongly mentioned as C. Boli Chetty, s/o Chinna Kutty Chetty instead of P. Othaiyappa Chetty s/o C. Boli Chetty and further I.A. No.231 of 2012 was also filed only before the commencement of trial. In the considered view of this Court, the amendment sought for by the petitioners will not alter the character of the suit and if it is allowed will not prejudice the rights of the respondents to contest the suit on merits. Considering the nature of the suit and the nature of the controversy involved in the suit, the trial court ought to have allowed the amendment application. Therefore, this Court is of the considered view that the finding of the trial court that the amendment application has been filed belatedly and if it is allowed, it will alter the character of the suit and bring forth a new cause of action is erroneous."

We have heard Mr. Mr. B. Karunakaran, learned advocate for the appellant and Mr. G. Sivabalamuarugam, learned advocate for the respondents.

According to the appellant, the amendment application was preferred three years after the stand was taken in the written

statement and it was nothing but an attempt to nullify the effect of the stand taken in the written statement. The plaint was drawn as per the instruction given by the plaintiff and the version given by the respondents its application seeking amendment, was completely false. It was submitted that applications for amendment filed much after the written statement, are not allowed so as to take away the effect of the rival pleadings made by the parties.

It is undoubtedly true that the application was preferred after the filing of the written statement but in the facts and circumstances of the case, in our view, the High Court was right and justified in allowing the application. Moreover, if application is not allowed, the plaintiff for all times to come will be precluded to prove his case with respect to said item (iv) property in the Schedule. Therefore, while affirming the view taken by the High Court, we direct as under:

- (a) Even if the application for amendment is allowed, the fact that initially the stand as aforesaid was taken in the original plaint and the response given by the present appellant in the written statement shall always be taken into account while considering the issues pertaining to item (iv) property of the Schedule.
- (b) The defence taken by the appellant as regards said item (iv) in the written statement had three elements as stated hereinabove. The amendment, will not have any

bearing so far as the first two elements are concerned.

- (c) The respondents shall pay to the appellant a sum of Rs.50,000/- by way of costs. The money shall be deposited in the trial court within four weeks from today which shall then be permitted to be withdrawn by the appellant.

In case, the costs are not deposited within the time stipulated, the order passed by the trial court rejecting the application for amendment shall stand revived.

With the aforesaid observations, the appeal is disposed of.

.....J.
(UDAY UMESH LALIT)

.....J.
(VINEET SARAN)

New Delhi
November 8, 2019.

ITEM NO.38

COURT NO.7

SECTION XII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 11446/2019

(Arising out of impugned final judgment and order dated 09-01-2019 in CRPPD No. 4551/2013 passed by the High Court Of Judicature At Madras)

O. KUPPUSAMY Petitioner(s)

VERSUS

V. EKAMBARAM & ORS. Respondent(s)

Date : 08-11-2019 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE UDAY UMESH LALIT
HON'BLE MR. JUSTICE VINEET SARAN

For Petitioner(s) Mr. B. Karunakaran, Adv. Mr.G. Sivabalamuarugam
Mr. Anirudha J., Adv.
Mr. S. Gowthaman, AOR

For Respondent(s) Mr.G. Sivabalamuarugam, Adv.
Mr. R. Sarathi, Adv.
Mr. M. Vivek Bharathi, Adv.
Mr. Selvaraj Mahendran, Adv.
Mr. Debasis Misra, AOR

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is disposed of in terms of the signed order.

(INDU MARWAH)
COURT MASTER (SH)

(SAROJ KUMARI GAUR)
COURT MASTER (NSH)

(Signed order is placed on the file)