

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 26.10.2016

Delivered on: 04.11.2016

CORAM

THE HONOURABLE THIRU JUSTICE **V. PARTHIBAN**

C.R.P.(PD) No.1244 of 2012 &
M.P.No.1 of 2013

V.G.N.Devadoss

.... Petitioner

vs

1. T.G.Krishnamurthy
2. P.Jayachandran
3. Santhanakrishnan
4. Ravi
5. K.M.Manjula
6. Natarajan
7. Siva
8. Meenakumari
9. Swanalatha
- 10.Senthilkumar
- 11.Jeyaprakash
- 12.Ramachandran
- 13.Raja Raghavan
- 14.Elangovan
- 15.Dellirani
16.
Baburaj Jain
- 17.Ramesh Jain
- 18.Gowthamchand Jain
- 19.Ramesh
- 20.Arivudainambi
- 21.Subramani
- 22.Poongavanam
- 23.Elumalai
- 24.Saraswathi
- 25.Idumathi

- 26.Porkarairani
- 27.B.Thasil
- 28.Balaraman
- 29.Durai
- 30.Anbu
- 31.Padmanabhan
- 32.Polam Mahadeva Reddy
- 33.Soundararajan
- 34.Shanmugam
- 35.Gopikrishnan
- 36.Venkatesan
- 37.Kadhiresan
- 38.Sampathkumar
- 39.Harinarayanan
- 40.Meenatchi
- 41.Saravanan
- 42.Prasanna Devi
- 43.Pudhumaiselvi
- 44.Harinarayanan
- 45.Venkatrasu
- 46.Meena
- 47.Ramanathan
- 48.Dillirani
- 49.Latha Chandrasekar
- 50.Doss
- 51.Karpagam
- 52.Elanchezian
- 53.Udhayakumar
- 54.Vijayakumar
- 55.Somasundaram
- 56.Rajeswara Rao
- 57.Rajakumar
- 58.Venkatesan
- 59.B.Latha
- 60.N.Latha
- 61.Bhaskar
- 62.Vanathi Ashok
- 63.Solaiammal
- 64.Kalpana
- 65.Sivaramakrishnan
- 66.Venkatesan
- 67.Santhanalakshmi
- 68.Kasturi

69.Chennai Thiruverkadu Town Panchayat
having office at Main Road, Thiruverkadu,
Chennai-77

70.Jafferull

71.Emamadin

72.Pradeepkumar

73.Sumitha

74.Saseendran Samuel

75.Srinigeerarisa

76.Venkatesan

77.Sripriya

78.R.Kanchana

79.Raffique Mohammed

80.Ramesh

81.Kishore Babu

82.Najamunisa

83.Nalini

84.Thennappan

85.Gnanasambandan

86.Sathyamoorthi

87.K.Bala

88.Jaya Shankar Murudiyar

89.Radha

90.Mandrikon

91.Chandrasedkara Mudaliar

92.Dozone India Pvt.Ltd.

.... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the order, dated 23.01.2012 passed by the learned Additional District Munsif, Poonamallee in I.A.No.1087 of 2011 in O.S.No.790 of 1995.

For petitioner : Mr.N.Damodsaran
for Mr.T.R.Raja Raman

For respondent : Mr.R.Krishnaswamy for R2

ORDER

This revision petition has been filed against the order dated

23.1.2012 passed by the learned trial Judge, allowing the I.A.No.1087 of 2011 in O.S.No.790 of 1995 filed under Order 6 Rule 17 CPC, seeking amendment to the plaint.

2. Heard the learned counsel appearing for both sides and perused the entire materials available on record.

3. The petitioner herein is the second defendant in the above said suit in O.S.No.790 of 1995 filed by the first respondent herein/plaintiff, for permanent injunction, to restrain the defendants including the petitioner herein, from selling or encumbering the suit property and for declaration. Pending the suit, the first respondent/plaintiff moved an interlocutory application, seeking certain amendments to be incorporated in the plaint including the prayer of declaration that the power of attorney deed executed by the first defendant in favour of the second defendant is not valid in law and that based on the said attorney deed, the sale made by the second defendant in favour of the defendants 3 to 95 in the suit, was null and void and not binding on the plaintiff.

4. According to the revision petitioner/second defendant, the amendment was sought after three years, which is beyond the period of limitation as prescribed under the Limitation Act, since the plaintiff

had knowledge of the first defendant selling the property to the second defendant, who in turn to the defendants 3 to 95 as early as on 29.1.2008 when a memo came to be filed on behalf of the first defendant in that regard in the pending suit.

5. In fact, the first respondent/plaintiff filed an impleading petition in I.A.No.248 of 2008, seeking impleadment of the defendants 2 to 95 on 19.6.2008 and the same was allowed on 28.6.2010. Thereafter, another interlocutory application in I.A.No.271 of 2008 was filed by the plaintiff, seeking inclusion of additional prayer for declaration of title and the same was also allowed on 30.4.2008.

6. The case of the revision petitioner is that the first respondent/plaintiff ought to have filed the application, seeking the amendment, within a period of limitation of three years and therefore, failure to file the application within the prescribed time limit, is *per se* hit by law of limitation and hence not maintainable. The learned counsel relied upon the *proviso* to Order 6 Rule 17 CPC, which envisages that no application for amendment shall be allowed after the commencement of the trial, unless the Court comes to the conclusion that in spite of due diligence, the parties could not have

raised the matter before the commencement of trial. The learned counsel also contended that the issue of limitation in the instant case is not mixed question of facts and law and that the proceedings pending before the trial Court was admitted and therefore, the law of limitation will have to be applied, which does not call for any adjudication at a later stage.

7. Per contra, learned counsel for the first respondent/plaintiff contended that the relief sought for in the interlocutory application, is only a consequential in nature and sought for only on the basis of the case set up by the defendants and that no new case was being introduced and that the character and structure of the suit was also not being altered by seeking such amendment.

8. On behalf of the revision petitioner, the following decisions were cited, viz.,

- i) 2006(3) CTC 27 (***D.Ramanujam versus R.Panneerselvam***)
- ii) 2008 (14) SCC 364 (***Rajkumar Gurawara (Dead), by LRs., versus S.K.Sarwagi & Company Private Limited and another***)
- iii) 2011 (2) CTC 28 (***N.Lalitha and others versus Manujothi Ashramam, rep. by its President and others***)

9. The above referred first decision deals with the amendment of pleadings after commencement of the trial, in which, this Court held that the amendment of pleadings cannot be allowed after commencement of trial. The second decision rendered by the Hon'ble Supreme Court is also on the same issue that after commencement of trial, whether amendment can be sought for. The third decision deals with the amendment of pleadings and to overcome the objections with regard to the limitation and such relief sought to be introduced by the plaintiffs is barred by limitation and such amendment cannot be allowed.

10. As far as the first issue is concerned, though it is correct in law that amendment cannot be sought after commencement of trial and the party seeking amendment should exercise due diligence and seek such amendment before commencement of trial as per proviso to Order 6 Rule 17 CPC. In the instant case, amendment sought is only a consequential in nature and as the subject interlocutory application in I.A.1087 of 2011 has proximity to the events unfolded regarding the selling of properties to the second defendant, who in turn to defendants 3 to 95. However, the learned Judge has not foreclosed the contention as regards the limitation urged by the revision petitioner, which according to the learned Judge, can be

determined after full fledged trial. In such view of the matter, the revision petitioner/2nd defendant is not prejudiced by the order passed by the learned Judge in allowing the said interlocutory application. Therefore, the decisions cited by the learned counsel for the revision petitioner though cannot be quarreled with, but the same cannot be applied to the facts of the present case.

11. On behalf of the first respondent/plaintiff, the following decisions were cited, viz.,

i) AIR 1967 SC 96 (***A.K.Gupta and Sons Ltd. Versus Valley Corporation***)

ii) AIR 1995 SC 187 (***Vineet Kumar versus Mangal Sain Wadhera***)

12. Both the above referred to decisions deal with the issue where the amendment does not constitute an addition of a new cause of action, or raise a new case, but amounts to no more than adding to the facts already on the record, such amendment can be allowed even after statutory period of limitation.

13. Considering the submissions put forth by the respective parties and also on going through the order dated 23.1.2012 passed by the learned trial Judge, allowing the interlocutory application, this

Court does not find any irregularity or infirmity therein in order to interfere with the same since the rights of the parties are left open to be decided during the trial. Such being the case, no prejudice would be caused to the revision petitioner as his objection regarding limitation is left open to be decided at the time of trial.

In the light of the above discussion, the Civil Revision Petition is dismissed. No costs. Consequently, connected MP is closed. Since the suit is of the year 1995 and more than two decades gone by now, the trial Court is directed to complete the trial as expeditiously as possible, preferably within a period of six months from the date of receipt of a copy of this order.

Internet: yes/no
Index: Yes/no
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04-11-2016

V.PARTHIBAN, J.

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Pre delivery Order in
CRP PD No.1244 of 2012

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