

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No.237 of 2014

ORDER:

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This Civil Revision Petition, under Article 227 of the Constitution of India, is filed by the plaintiff against the order dated 26.11.2012 of the learned Additional Junior Civil Judge, Chittoor passed in I.A.No.595 of 2012 in O.S.No.4 of 2006 filed under Order VI Rule 17 of the Code of Civil Procedure requesting to permit the amendment of the plaint to seek the relief of declaration of title of the plaintiff over plaint 'B' schedule land in addition to the relief of permanent injunction, which is already claimed in the suit.

2. I have heard the submission of learned Senior Counsel for the revision petitioner/plaintiff and the learned Government Pleader for Arbitration representing the defendants/respondents. I have perused the material record.

3. The introductory facts, which are necessary for consideration, in brief, are as follows:

The plaintiff brought a suit for perpetual injunction. After the State filed its written statement resisting the suit, in view of the defence taken by the State, the plaintiff sought amendment of the plaint for seeking the relief of declaration of title. That application was resisted by the State by filing a counter. On merits, the trial Court had dismissed the petition for amendment filed by the plaintiff. Therefore, the plaintiff is before this Court.

4. At the hearing, learned counsel for the plaintiff would submit that the specific case of the plaintiff is that in view of the stand taken by the State in the written statement, she was advised to

seek declaration of title in respect of plaint 'B' schedule land and also consequential amendments in the body of the plaint, as detailed in the petition list; and, that the amendment sought is only in regard to seeking additional prayer of declaration of title without changing the pleadings in the plaint; and, therefore, the proposed amendment is not going to alter the nature and the basic structure of the suit; and, that as per settled law, the Court is empowered to permit conversion of a suit for permanent injunction into a suit for declaration of title; and, that the Court below was not correct in dismissing the application on the ground of limitation by ignoring the fact that the issue of limitation is a mixed question of fact and law and that the said issue of Limitation has to be considered at the time of final adjudication of the issues involved in the suit after full-fledged trial, but, not at the stage of considering the application for amendment of plaint; and that delay is no ground to reject the application for amendment; and that, therefore, the order impugned is unsustainable.

5. The learned Government Pleader would submit that the Government had taken a specific defence that the suit schedule land was classified as a 'topu' and that it was originally assigned to landless poor persons with a condition of non-alienation; but, the assignees have alienated the properties violating the said condition; and, that having come to know of the same, the Tahasildar had initiated action and resumed possession of the land; and that the Government is in possession of the land; and that the suit is filed for bare permanent injunction on the premise that the plaintiff is in possession of the land, though the Government are in possession; and that on the date the written statement was filed, the plaintiff is aware that the Government has

taken a defence that the land is a Government land and that the plaintiff has no right and title over the property; but, the plaintiff had belatedly filed the subject application after the period of three years limitation provided under Article 58 of the Indian Limitation Act; and that, therefore the trial Court has rightly dismissed the petition; and hence, the revision is devoid of merit.

6. I have given earnest consideration to the facts and the submissions.

6.1 Since by way of the present amendment petition, the plaintiff is seeking to convert the suit for permanent injunction into one for declaration of title, the first aspect to be dealt with is – ‘whether such an amendment of plaint as sought for can be permitted?’. This question need detain this Court for long as in **Pankaja v. Yellappa**^[1], the Supreme Court while holding that though the plaint is initially filed for permanent injunction there is no bar for permitting the amendment of the plaint to seek the relief of declaration of title in respect of plaint schedule property, had set aside the order of the trial Court rejecting the application seeking for amendment as confirmed by the High Court and had permitted the amendment holding *inter alia* that the question – ‘whether or not the suit seeking the relief of declaration is barred by limitation’ can be gone into in the main suit.

6.2 Dealing next with delay, be it noted that in **Sampath Kumar v. Ayyakannu**^[2], the facts disclose that the trial Court had rejected the application for amendment of pleadings on the ground of delay and the Madras High Court while dismissing the revision had confirmed the said order of the trial Court. However, the

Supreme Court while setting aside the orders of the said two courts and permitting the amendment of the plaint, which was sought for about 11 years from the date of institution of the suit, had held as follows:

In the present case, the amendment is being sought for almost 11 years after the date of the institution of the suit. The plaintiff is not debarred from instituting a new suit seeking relief of declaration of title and recovery of possession on the same basic facts as are pleaded in the plaint seeking relief of issuance of permanent prohibitory injunction and which is pending. In order to avoid multiplicity of suits, it would be a sound exercise of discretion to permit the relief of declaration of title and recovery of possession being sought for in the pending suit. The plaintiff has alleged the cause of action for the reliefs now sought to be added as having arisen to him during the pendency of the suit. The merits of the averments sought to be incorporated by way of amendment are not to be judged at the stage of allowing prayer for amendment.

Therefore, on the ground of mere delay, however long it may be, an application for amendment cannot be rejected provided the facts of the case warrant allowing of the amendment.

6.3 Dealing finally with the contention of the Government that the relief of declaration of title now being sought to be introduced by way of the proposed amendment is barred by law of limitation and the submission of the learned Government Pleader that the period of limitation for seeking declaration of title is 3 years as per the provision of the Article 58 of the Indian Limitation Act, what is to be noted is that the issue of limitation is blend of fact and law and is not a pure question of law. In **Pankaja's case** (1 supra) the Supreme Court had held that the question – 'whether or not the suit seeking the relief of declaration is barred by limitation' can be gone into in the main suit. Further, the learned counsel for the plaintiff brought to the notice of this Court a decision in **M.Chokka Rao v. Sattu Sattamma**^[3], wherein this Court having exhaustively dealt with the provisions of law under the Indian Limitation Act and the relevant precedents had laid down that when

the suit is not for a simple declaration but is for a declaration coupled with further relief, the limitation is 12 years but not 3 years and that Article 58 is not applicable to such suits. While the learned Government Pleader for the defendants-respondents pleaded that under Entry 58 of the Schedule to the Limitation Act, the declaration sought for by the appellants in this case ought to have been done within 3 years when the right to sue first accrued, the appellant-plaintiff contends that the same does not fall under the said Entry but falls under Entry 64 or 65 of the said Schedule of the Limitation Act which provides for a limitation of 12 years. Therefore, according to the plaintiff the prayer for declaration of title is not barred by limitation. Be that as it may, as already noted the issue of limitation will have to be gone into by the trial Court at an appropriate stage in the main suit, it being a mixed question of fact and law. Therefore, in the well considered opinion of this Court, on the ground of limitation, the application seeking amendment of the plaint is not liable for rejection as in the case on hand, the trial Court has to consider whether suit for declaration seeking further relief is governed by Article 58 or Articles 64 and 65 of the Indian Limitation Act.

7. Viewed thus, this Court finds the order of the trial Court which is contrary to settled legal position is unsustainable both under facts and in law.

8. Accordingly, the Civil Revision Petition is allowed and the impugned order dated 26.11.2012 in I.A.No.595 of 2012 in O.S.No.4 of 2006 passed by the learned Additional Junior Civil Judge, Chittoor, is set aside and consequentially I.A.No.595 of 2012 in O.S.No.4 of 2006 is allowed.

Since the suit is of the year 2006, the plaintiff is directed to

amend the plaint as now directed and file the neat copy of the plaint before the trial Court within 20 days from the date of receipt of a copy of this order. On filing of such amended plaint, the trial Court shall give an opportunity to the State to file additional written statement, if any, and shall frame the necessary additional issues and shall expeditiously proceed with the trial of the suit and dispose of the suit in strict accordance with the procedure established by law, however, as expeditiously as possible and preferably within a period of six months. No order as to costs.

Consequently, miscellaneous petitions, if any, pending in the Civil Revision Petition shall also stand dismissed.

M.SEETHARAMA MURTI, J

29th February, 2016

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^[1] 2004(6)SCC 415

^[2] (2002) 7 SCC 559

^[3] 2006(1) ALD 116