

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION NO.5241 OF 2015

ORDER

Petitioners are the plaintiffs in O.S.No.197 of 2007 on the file of the learned Principal Junior Civil Judge, Tadepalligudem. The suit was filed for a permanent injunction against the respondents/ defendants. While so, the petitioners/plaintiffs filed I.A.No.1000 of 2011 in the said suit under Order 6 Rule 17 CPC seeking to amend the plaint and their suit prayer. Thereby, they wanted to seek the relief of declaration and the consequential relief of possession claiming that they had been dispossessed after the filing of the suit. By order dated 01.08.2014, the trial Court dismissed the I.A. Aggrieved thereby, they are before this Court by way of this Civil Revision Petition filed under Article 227 of the Constitution.

By order dated 10.12.2015, this Court granted interim stay of further proceedings in the suit.

Heard Sri Sai Gangadhar Chamarty, learned counsel for the petitioners/plaintiffs, and Sri T.N.M.Ranga Rao, learned counsel for the respondents/defendants.

Perusal of the order under revision reflects that the trial Court opined that the petitioners/plaintiffs were presumably dispossessed after passing of the order dated 07.11.2007 in I.A.No.1162 of 2007 in the suit and it must therefore be deemed that their dispossession took place in the year 2007. Being of the further opinion that as a suit for declaration had to be filed within three years and as the subject amendment petition was filed beyond the stipulated period, having been filed on 13.04.2011, the trial court concluded that the petition was barred by limitation and dismissed the same.

The question that arises presently is whether the trial court could have gone into the merits of the amendment sought and denied leave to amend on that basis?

Both the learned counsel pressed into service case law in support of their rival contentions.

In ***K.CHINNA BIDDAMMA V. J.KRISHNAMA NAIDU***^[1], this Court was dealing with a similar case wherein, in a suit filed for a mere injunction, amendment of the plaint was sought seeking the relief of declaration of title. The trial Court considered the merits of the amendment and arrived at a finding that the land in question was a Government land and opined that the amendment petition could not be allowed. The trial Court also held that as the relief of declaration could be sought only within three years, the amendment sought was beyond time. This Court however negated this approach of the trial Court and affirmed that an application for amendment should be considered liberally as multifarious proceedings would be avoided thereby. Insofar as the question of limitation was concerned, this Court pointed out that even in a case where a claim is barred by limitation, it can be directed to be inserted by way of an amendment as what is necessary to be seen at that stage is whether in the interest of justice such an amendment should be permitted.

Again in ***GUJJARI VITTAL V/s. PADALA SADANANDAM***^[2], this Court, relying on ***L.J.LEACH AND COMPANY LIMITED V/s. JARDINE SKINNER AND COMPANY***^[3], affirmed that even if a new prayer, which would be barred by limitation, is sought to be added by way of an amendment, the Court is not powerless to permit such amendment.

In ***PANKAJA V/s. YELLAPPA (DEAD) BY LRS.***^[4], the Supreme Court was considering the question whether in cases where delay had extinguished the right of the party by virtue of expiry of the period of limitation prescribed in law, the Court can, in exercise of its discretion, take away the right accrued to the other party by allowing such belated amendments. The Supreme Court observed that the law in this regard is quite clear and consistent that there is no absolute rule that in every case

where a relief is barred by limitation, an amendment should not be allowed. Discretion in such cases depends on the facts and circumstances of the case and would have to be exercised on a judicious evaluation thereof. If granting of an amendment really subserves the ultimate cause of justice and avoids further litigation, the same should be allowed. The Supreme Court further added that there can be no straitjacket formula for allowing or disallowing an amendment and each case would depend on the factual background of that case. Reliance in this regard was placed on the observations made in **L.J.LEACH AND COMPANY LIMITED³** to the effect that while it is no doubt true that Courts would, as a rule, decline to allow amendment if a fresh suit on the amended claim would be barred by limitation on the date of the application, that is only a factor to be taken into account in exercise of the discretion as to whether such amendment should be ordered and would not affect the power of the Court to order it if it is required in the interest of justice. It was pointed out that this view was reiterated in **T.N.ALLOY FOUNDRY COMPANY LIMITED V/s. T.N.ELECTRICITY BOARD^[5]**. The Supreme Court ultimately held that an application for amendment of the pleading should not be disallowed merely because it is opposed on the ground that the relief sought thereunder is barred by limitation and on the contrary, the application should be considered bearing in mind the discretion that is vested with the Court to allow or disallow such amendment in the interest of justice.

Per contra, Sri T.N.M.Ranga Rao, learned counsel, cited the following case law:

Reliance was placed on paragraph 29 of **L.C.HANUMANTHAPPA (SINCE DEAD) REP. BY HIS LRs V/s. H.B.SHIVAKUMAR^[6]**. But perusal thereof reflects that the observations made therein related to the individual facts of that case. This judgment is therefore of no avail.

I n **POSHETTY LURDAMMA (SINCE DIED) V/s. KUNDAY**

MALLAIAH (SINCE DIED)^[7], refusal by the trial Court to permit a belated amendment was upheld by this Court on the ground that such application had been made after adducing of evidence by the plaintiffs and at the stage of the defendants' evidence. The amendment petition was therefore found to be not only belated but also lacking in *bonafides*. This judgment has no application on facts to the present case.

In **DAYA SINGH V/s. GURDEV SINGH (DEAD) BY LRS.**^[8], the issue under consideration was as to when the right to sue for declaration would arise in the context of the limitation prescribed under Article 58 of the Limitation Act, 1963. As this Court is presently not concerned with this aspect of the matter, the judgment does not further the case of the respondents-defendants.

DESAI KRISHNAMURTHY V/s. PINJARI MOULA ALI SAB^[9] and **BURAGAPU MEENAKSHI V/s. SATYA PANIGRAHI**^[10] are distinguishable on facts as the applications for amendment therein were filed after commencement of the trial unlike the present case.

RAMOJI RAO V/s. M.A.E.KUMAR KRISHAN VARMA^[11] was relied upon in support of the contention that the trial in a suit must be deemed to have commenced upon framing of issues. Reference in this regard was made therein to **KAILASH V/s. NANHKU**^[12], wherein it was observed that the trial begins in civil suits when issues are framed and the case is set down for recording of evidence.

In the present case, there is no material placed before this Court as to the actual stage of the suit proceedings. It is however admitted that no evidence has been let in by the plaintiffs. Even if it is accepted that the issues have been framed by the trial Court and the evidence is to be adduced, thereby leading to an inference that the trial has commenced, it is significant to note that the trial Court did not deal with the subject amendment application in the context of the proviso to Order 6 Rule 17 CPC. It is not as if commencement of the trial would absolutely bar the

parties from seeking amendment of their pleadings. The proviso stipulates the framework within which, even after commencement of the trial, the parties to the suit may be permitted to amend their pleadings. However, in the case on hand, as stated *supra*, this was not the basis for rejection of the petitioners/plaintiffs' amendment petition. The only ground cited by the trial Court for rejection of the I.A. was that their amended prayer would be barred by limitation.

As pointed out by the Supreme Court in ***L.J.LEACH AND COMPANY LIMITED³***, ***T.N.ALLOY FOUNDRY COMPANY LIMITED⁵*** and followed by this Court in ***K.CHINNA BIDDAMMA¹*** and ***GUJJARI VITTAL²***, there is no absolute embargo placed on the Court not to allow an amendment petition if the prayer sought to be introduced by way of such amendment is barred by limitation as on the date of the application. The Court is required to exercise its discretion judiciously, keeping this factor in mind, and allow the amendment notwithstanding the same if it is in the interest of justice and/or reduces multiplicity of proceedings. As the trial Court failed to recognize this aspect and exercise the discretion vested in it in this regard but baldly rejected the amendment petition on the sole ground that the amended prayer was barred by limitation, the order under revision cannot be sustained and is accordingly set aside. The matter is remitted to the file of the trial Court for consideration of the amendment I.A. afresh in accordance with law. All issues are left open.

The Civil Revision Petition is allowed to the extent indicated above. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

3rd FEBRUARY, 2016
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[\[1\]](#) 2001 (1) ALD 304

- [\[2\]](#) 2001 (1) ALD 460
- [\[3\]](#) AIR 1957 SC 357
- [\[4\]](#) (2004) 6 SCC 415
- [\[5\]](#) (2004) 3 SCC 392
- [\[6\]](#) 2015 (6) ALD 14 (SC)
- [\[7\]](#) 2015 (6) ALD 452
- [\[8\]](#) (2010) 2 SCC 194
- [\[9\]](#) 2014 (3) ALD 639
- [\[10\]](#) 2014 (4) ALD 621
- [\[11\]](#) 2012 (1) ALD 259
- [\[12\]](#) (2005) 4 SCC 480