

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.07.2017

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

Rev.Appln.No.61 of 2017
against
C.R.P.No.652 of 2014

Shanmugam

..Petitioner

Versus

1.Natarajan
2.N.Vadivel

..Respondents

Prayer: Review Application filed under Order 47 R.1 r/w Sec 114 of C.P.C, to review the order passed by this Hon'ble Court in CRP(PD).No.652/2014, dated 09.12.2016 and allow the present Review application.

For Petitioner

:Mr.I.C.Vasudevan

For Respondents

:Mr.N.Manokaran

सत्यमेव जयते

ORDER

WEB COPY

This Review Application is filed on the ground that the amendment petition filed before the Additional District Munsif Court, Tiruchengode in I.A.No.798 of 2013 in O.S.No.182 of 2008 is time barred. The plaintiffs after three years from the alleged cause of action filed the amendment petition.

2. Thus, the learned counsel appearing for the review petitioner contended that when the plaintiffs cannot file a fresh suit on the same cause of action, on account of the lapse of three years of period, the trial Court has rightly rejected the petition for amendment of plaint. To substantiate the claim, the learned counsel cited the judgement of the Hon'ble Supreme Court of India in the case of **Revajeetu Builders and Developers Vs. Narayanaswamy and Sons and Others, (2009)10 SCC,84**. In sub Clause 6, **paragraph 63** of the above judgement is extracted here under;

“ (6). as a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.”

3. In the case of **Chinnu Padayachi & another Vs. Dhanalakshmi & others, reported in 2012-1-L.W.74**, in **paragraph 8**, this Court has passed the following orders:

“ While considering the first issue, as stated already, the suit has been filed on 26.4.2005. The Advocate Commissioner has filed his interim report on 28.04.2005 and filed his final report on 30.09.2005. In his report, the construction put up by the petitioners was set out by the Advocate Commissioner. Admittedly, an application was filed by the respondents on 09.07.2010 for amendment of the pleadings, incorporating the prayer for mandatory injunction. In the affidavit in support of the application, the respondents have stated that after filing of the suit, the

petitioners herein have put up the said construction. It is not stated in the affidavit, when such construction was put up, even though it is stated that after filing of the suit, the said construction was put up. Hence, the relief of mandatory injunction cannot be entertained.”

4.The Hon'ble Supreme Court of India in clear terms stated that as a general rule, the Court should decline the amendments if a fresh suit on the amended claims would be barred by limitation on the date of application. Thus, the learned counsel contended that in respect of the present amendment petition filed in the suit, the time has lapsed for filing a fresh suit and therefore, the amendment petition filed by the plaintiffs cannot be entertained.

5.Countering the arguments, on behalf of the respondents, the learned counsel appearing for the respondents contended that the actual violation by putting up additional constructions was done on 26.08.2010 and a photograph to that effect was filed along with the complaint before the police on 17.10.2010 and further photographs were taken on 09.11.2010 and 29.11.2010. Thus, the plaintiffs came to know that the illegal construction commenced by the defendant was only on 26.8.2010 and the amendment petition was filed on 01.08.2013. Thus, the amendment petition was filed within a period of three years and there is no time lapse in this regard. In support of his claim the

learned counsel cited the judgement of the Hon'ble Supreme Court of India, in

the case of *Ragu Thilak D.John Vs. S.Rayappan and Others*, reported in **2001 2 SCC 472**. In paragraphs 5 & 6 of the above judgement are extracted here under:

“5. After referring to the judgments in Charan Das v. Amir Khan, L.J. Leach & Co.Ltd. V. Jardine Skinner & Co., Ganga Bai v. Vijay Kumar, Ganesh Trading Co. V. Moji Ram and various other authorities, this Court in B.K.Narayan Pillai v. Parameswaran Pillai held: (SCC p.715, para 3)

“3. The purpose and object of Order 6 Rule 17 CPC is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. The power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interests of justice on the basis of guidelines laid down by various High Courts and this Court. It is true that the amendment cannot be claimed as a matter of right and under all circumstances. But it is equally true that the courts while deciding such prayers should not adopt a hyper technical approach. Liberal approach should be the general rule particularly in cases where the other side can be compensated with the costs. Technicalities of law should not be permitted to hamper the courts in the administration of justice between the parties. Amendments are allowed in the pleadings to avoid uncalled-for multiplicity of litigation.”

6. If the aforesaid test is applied in the instant case, the amendment sought could not be declined. The dominant purpose of allowing the amendment is to minimise the litigation. The plea that the relief sought by way of amendment was barred by time is arguable in the circumstances of

the case, as is evident from the perusal of averments made paras 8(a) to 8(f) of the plaint which were sought to be incorporated by way of amendment. We feel that in the circumstances of the case the plea of limitation being disputed could be made a subject-matter of the issue after allowing the amendment prayed for.”

7. In paragraphs 18 and 19 of the judgement of the Hon'ble Supreme Court of India in the case of ***Pankaja and Another Vs. Yellappa (Dead) by LRS. And Others, reported in 2004, 6 SCC 415***, are extracted here under:

“18. We think that the course adopted by this Court in Ragu Thilak D.John case applies appropriately to the facts of this case. The courts below have proceeded on an assumption that the amendment sought for by the appellants is ipso facto barred by the law of limitation and amounts to introduction of different relief than what the plaintiff had asked for in the original plaint. We do not agree with the Courts below that the amendment sought for by the plaintiff introduces a different relief so as to bar the grant of prayer for amendment, necessary factual basis has already been laid down in the plaint in regard to the title which, of course, was denied by the respondent in his written statement which will be an issue to be decided in a trial. Therefore, in the facts of this case, it will be incorrect to come to the conclusion that by the amendment the plaintiff will be introducing a different relief.

19. We have already noted, hereinabove, that there is an arguable question whether the limitation applicable for seeking the relief of declaration on facts of this case falls under Entry 58 of the Limitation Act or under Entry 64 or Entry 65 of the Limitation Act which question has to be decided in the trial, therefore, in our view, following the judgment of this Court in the case of Ragu Thilak D.John we set aside the impugned

orders of the Courts below, allow the amendment prayed for, direct the trial Court to frame necessary issue in this regard and decide the said issue

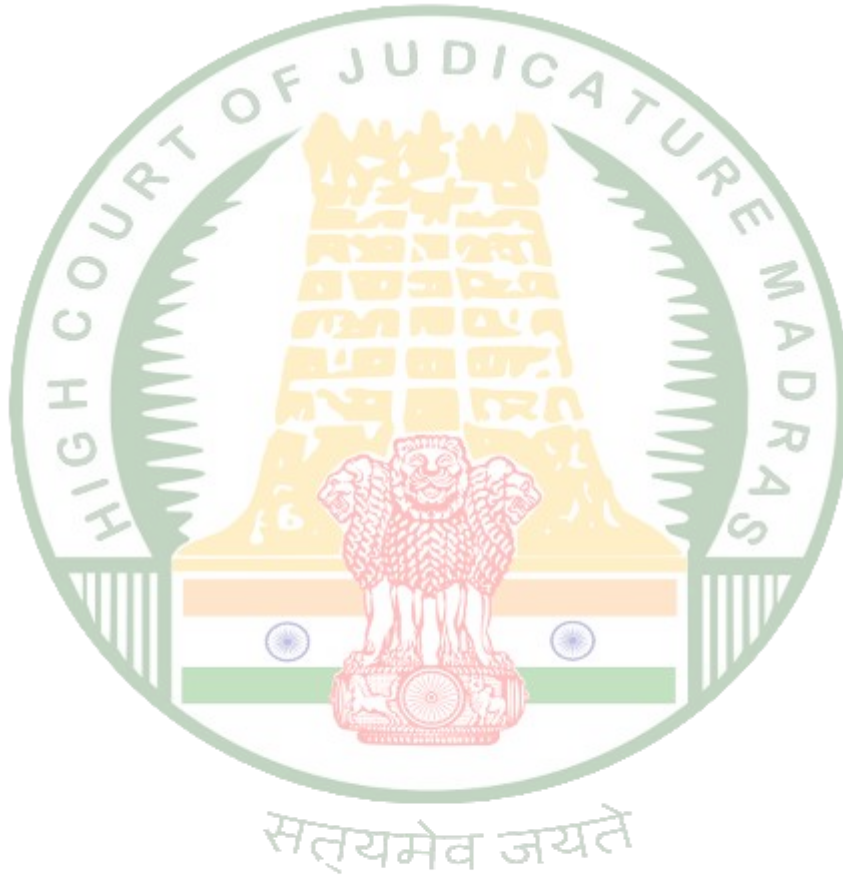
in accordance with law bearing in mind the law laid down by this Court in the case of L.J.Leach and Co.Ltd.”

8. In sub-clause 7 and 12 in paragraph 5 of the judgement of the High Court of Madras, in the case of ***Thiru Alankadu Immudi Ahora Dharma Sivachariar Aiya Vaisya Madam, Nerinchipettai, Bhavani Taluk, Erode District Vs. Udumalpet Samayapuram Ayira Vaisya Sangam, reported in 2005 (4) CTC 664*** are extracted here under:

“7. The question of limitation should not have been decided by the Court below at present, since it is a question to be decided on merits with oral and documentary evidence. At present, we are concerned with the amendment application, which is governed only under Order 6, Rule 17 C.P.C. The amendment application should be allowed, if it is not going to change the nature of suit nor does it affect the rights of the defendants.

12. In regard to the stand of the defendants that the declaration sought by the plaintiffs is barred by limitation, there is dispute and it is not an admitted fact. While the defendants pleaded that under Entry 58 of the Schedule to the Limitation Act, the declaration sought for by the plaintiffs in this case ought to have been within three years when the right to sue first accrued, the plaintiffs contend that the same does not fall under the said entry but falls under Entry 64 and 65 of the said Schedule to the Limitation Act, which provides for a limitation of 12 years, therefore,

according to them, the prayer for declaration of title is not barred by limitation, the amendment sought could not be declined. The dominant



WEB COPY

purpose of allowing the amendment is to minimise the litigation. The plea of limitation, being disputed, could be made a subject-matter of the issue, after allowing the amendment prayed for.”

9. The learned counsel appearing for the respondents contended that this Court in the case of ***Alankadu Immudi Ahora Dharma Sivachariar Aiyra Vaisya Madam, Nerinchipettai, Bhavani Taluk, Erode District Vs. Udumalpet Samayapuram Ayira Vaisya Sangam***, issued guidelines based on the judgement rendered by the Apex Court as well as this Hon'ble Court.

10. Accordingly, this Court held that “ when there is dispute as to bar of of limitation, amendment sought could not be declined. The dominant proposal of allowing the amendment is to minimise the litigation. The plea of limitation, being disputed, could be made a subject-matter of the issue, after allowing the amendment prayed for.”

11. In the case on hand, the factual dispute has been raised by the learned counsel for the respondents, by producing the copies of the photographs and the police complaint which was filed on 17.10.2010. Further, these factual disputes were not adjudicated before the learned Additional District Munsif Court, Tiruchengode.

S.M.SUBRAMANIAM,J.

ms/kak

12. In view of the factual disputes now raised with regard to the period of limitation, it is preferable to follow the guidelines issued by this Court. Accordingly, this Court is also of the opinion that the plea of limitation can be made as a subject matter of the issue after allowing the amendment as prayed for. Accordingly, the earlier order passed by this Court on 09.12.2016, setting aside the order passed by the Additional District Munsif Court, Tiruchengode in I.A.No.798 of 2013 dated 11.11.2013 holds good and confirmed. Further, it is made clear that the issue regarding the plea of limitation shall be made as an issue in the suit and both the plaintiffs as well as the defendant shall be given an opportunity to adduce evidence in this regard and accordingly.

13. With these modifications, the review application stands disposed of. However, there is no order as to costs.

31.07.2017

Index: Yes/No
ms/kak

WEB COPY**Rev.Appl.No.61 of 2017**