



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.02.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(MD)No.2612 of 2015 (PD)  
& M.P.(MD) No.2 of 2015

The Federal Bank Ltd.,  
Through its Branch Manager,  
M.G.Road,  
Ernakulam North,  
Kerala District.

.. Petitioner

Vs.

1.Chinnamalar Plantation Pvt. Ltd.,  
Rep. by its Managing Director,  
John P.Joseph,  
S/o.Kurian Jospeh,  
Vellappatti House,  
Alleppey North Po.,  
Kerala - 688 007.

2.Rajitha Begum, W/o.Anna Sahbi

3.Rasitha Begam, W/o.Sulaiman

4.Sabura Begam, W/o.Ibrahim

5.Shabia, W/o.Karimuhan

6.Fathima Begum, W/o.Mariyappan

7.Babu Misrikhan, S/o.Late. Bhazeer Khan

8.Sujin Christudas, S/o.Christudas

9.Vincent Mathew, S/o.Mathew

.. Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, against the order and decretal order, dated 03.03.2015, made in I.A.No.176 of 2013 in O.S.No.120 of 2010, on the file of the I Additional District Court, Tirunelveli.

For Petitioner

: Mr.Srinatha Sridevan

**ORDER**

This Civil Revision Petition has been filed against the order and decretal order, dated 03.03.2015, made in I.A.No.176 of 2013 in O.S.No.120 of 2010, on the file of the I Additional District Court, Tirunelveli.

2. The petitioner is the 9<sup>th</sup> defendant in the suit in O.S.No.120 of 2010 and 9<sup>th</sup> respondent in I.A.No.176 of 2013 on the file of the I Additional District Court, Tirunelveli. The first respondent is the plaintiff in the said suit and petitioner in the said I.A. The respondents 2 to 9 are defendants 1 to 8 in the suit and respondents 1 to 8 in the I.A. The first respondent filed the suit for declaration to declare the sale deed, dated 22.06.2007, bearing Document No.1339/2007, registered at Sub-Registrar Office, Tisayanvilai, as null and void and for permanent injunction.

3. The petitioner filed written statement in the month of January 2011 stating that the respondents 2 to 7 through their Power Agent, the 8<sup>th</sup> respondent herein, sold the property to the 9<sup>th</sup> respondent, by the deed of sale, dated 18.06.2007. The 9<sup>th</sup> respondent mortgaged the properties, purchased by him, with the petitioner and borrowed a sum of Rs.1 Crore. The respondents 2 to 7 are owners and appointed the 8<sup>th</sup> respondent as their Power Agent, who sold the property to the 9<sup>th</sup> respondent.

4. The first respondent filed I.A.No.176 of 2013 under Order VI Rule 17 and Section 151 C.P.C., for amendment of plaint to include the prayer of declaration to declare that the plaint schedule properties belongs to the 1<sup>st</sup> respondent's Company and for injunction and other consequential amendment in the plaint as mentioned in I.A.No.176 of 2013. According to the first respondent, the petitioner is tracing a rival claim of the title with regard to the plaint schedule properties in its written statement. The said contention is not correct and the petitioner has to prove the same by letting in oral and documentary evidence. In view of the said contention of the petitioner in the written statement, it is necessary for the first respondent to file an application for amendment to include the prayer of declaration of title in addition to permanent injunction already prayed for.

5. The petitioner/9<sup>th</sup> defendant filed counter affidavit and opposed the said application and submitted that the first respondent did not mention about earlier title and did not mention about Inam Abolition Proceedings in the plaint originally filed. The said proceedings, in any event, is not binding on the petitioner and the respondents 2 to 9, as they are not parties to the proceedings. The first respondent has no right against true owners to claim the relief on the basis of Inam Abolition Proceedings. The first respondent did not seek the

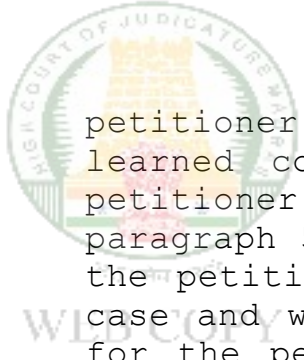


relief in respect of the properties, while filing the plaint originally. The present amendment seeking the relief of declaration is barred by limitation. If the application filed by the first respondent, is allowed, it would be nothing, but allowing the first respondent to introduce a new case and facts, by this amendment. Therefore, the application for amendment is not maintainable. If it is allowed, it will cause irreparable loss and damage to the petitioner.

6. The I Additional District Judge, Tirunelveli, considering the averments made in the affidavit, counter affidavit, plaint, written statement and various judgments relied on by the learned counsel for the first respondent, allowed the application for amendment holding that in a suit for permanent injunction, when the defendant disputes the title of the plaintiff, the plaintiff has right to amend the plaint for a relief of declaration. The learned I Additional District Judge has also held that by amendment, the character of the suit and cause of action will not be changed. The first respondent has stated in the plaint that they are in possession of the suit properties and in the revenue records, they are shown as owners and the first respondent has already sought for declaration to declare the sale deed, dated 22.06.2007, as null and void.

7. Against the said order dated 03.03.2015, the petitioner has come out with the present Civil Revision Petition.

8. The learned counsel for the petitioner submitted that the relief of declaration sought for by the first respondent by amendment is barred by limitation and a new relief of declaration is being introduced by way of amendment. The first respondent came to know about the execution of sale deed by the 8<sup>th</sup> respondent as Power Agent of the respondents 2 to 7 to the 9<sup>th</sup> respondent, even prior to 08.11.2008, when the first respondent gave a police complaint against the 9<sup>th</sup> respondent and also when he got impleaded in W.P.(MD)No.3235 of 2008 and therefore, as per Article 58 of the Limitation Act, the suit for declaration of title ought to have been filed within three years. He further submitted that the Hon'ble Apex Court in the judgment reported in 2013 (3) SCC 182 [Board of Trustees of Port of Kandla Vs. Hargovind Jasraj and another] held that for decree of declaration as per Article 58 of the Limitation Act, the period of limitation is three years, from the date when the right to sue first accrued. The conclusion of the learned I Additional District Judge that the petitioner has no locus standi to contest the amendment application on the ground that he is not a purchaser, is not correct. The petitioner has granted a loan of Rs.1 Crore to the 9<sup>th</sup> respondent on the security of suit property and if the 1<sup>st</sup> respondent seeks the order of amendment. The proposed amendment introduces new cause of action and entire character of the suit will be changed and the



petitioner will be deprived of their valuable vested right. The learned counsel for the petitioner further submitted that the petitioner is opposing only the amendment as mentioned in paragraph 5 of the application and in respect of other amendments, the petitioner will file a written statement setting forth their case and will have their defence on merits. The learned counsel for the petitioner also submitted that as per Section 34 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [hereinafter referred to as 'the SARFAESI Act'] and Section 18 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, the Civil Court has no jurisdiction to entertain the suit.

9. Mr.AR.L.Sundaresan, learned Senior Counsel appearing for the first respondent submitted that the amendment sought for is pre-trial amendment. The amendment is necessitated, as the petitioner is disputing the title of the first respondent. The first respondent has stated in the plaint that they are owners and they are in possession of the suit property and in all the revenue records, they are shown as owners. The respondents 2 to 7 are not Directors of the first respondent. They colluded together with the respondents 8 and 9 and also with the Manager of the petitioner's Bank and played fraud on the first respondent. The first respondent has made such averments in the plaint. In view of the fact that the first respondent has stated that they are the owners and they are in possession of the suit property, the amendment sought for does not introduce a new cause of action or change the character of the suit. In the suit, issues are not yet framed. After allowing the application filed by the first respondent, the amendment was carried out and amended copy of the plaint was also filed. The petitioner also filed additional written statement with regard to amended plaint. The suit is not challenging the right of the petitioner to initiate proceedings against the 9<sup>th</sup> respondent under the SARFAESI Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and therefore, only Civil Court has jurisdiction to entertain the suit for the said relief sought for by the first respondent. The learned Senior Counsel further submitted that amendment sought for is not barred by limitation, as the application for amendment has been filed within three years from the date of filing of the written statement, wherein the petitioner has disputed the title of the first respondent.

10. In support of his submissions, the learned Senior Counsel appearing for the first respondent relied on the following judgments:

(i) 2008 (4) SCC 594 [Anathula Sudhakar Vs. P.Buchi Reddy (Dead) By LRs. and others], wherein at paragraph 14, it has been held as follows:

<https://hcservices.ecourts.gov.in/hcservices> may however clarify that a prayer for declaration will be necessary only if the denial of title by the defendant or challenge to plaintiff's title raises a

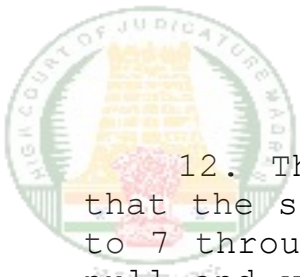


cloud on the title of plaintiff to the property. A cloud is said to raise over a person's title, when some apparent defect in his title to a property, or when some prima facie right of a third party over it, is made out or shown. An action for declaration, is the remedy to remove the cloud on the title to the property. On the other hand, where the plaintiff has clear title supported by documents, if a trespasser without any claim to title or an interloper without any apparent title, merely denies the plaintiff's title, it does not amount to raising a cloud over the title of the plaintiff and it will not be necessary for the plaintiff to sue for declaration and a suit for injunction may be sufficient. Where the plaintiff, believing that defendant is only a trespasser or a wrongful claimant without title, files a mere suit for injunction, and in such a suit, the defendant discloses in his defence the details of the right or title claimed by him, which raises a serious dispute or cloud over plaintiff's title, then there is a need for the plaintiff, to amend the plaint and convert the suit into one for declaration. Alternatively, he may withdraw the suit for bare injunction, with permission of the court to file a comprehensive suit for declaration and injunction. He may file the suit for declaration with consequential relief, even after the suit for injunction is dismissed, where the suit raised only the issue of possession and not any issue of title."

(ii) This Court, in C.R.P.(MD)No.2560 of 2011 [Chitra Vs. Kannan], dated 30.01.2015, wherein at paragraph 12, held as under:-

"12. Though the learned counsel for the respondent referred to Articles 58 and 113 of the Limitation Act, he was not able to demonstrate as to how the prayer for declaration would be out of the period of limitation. When already a suit for injunction, which involves the question of title, has been filed admittedly within time, there shall be no question of the bar of limitation being attracted for seeking the relief of declaration, more so during the pendency of the suit for injunction. Even assuming that separate period of limitation can be applied in respect of the prayer for declaration, the right to sue for declaration arose only on the filing of the written statement of the respondent containing averments denying the title of the petitioner herein. Within three years thereafter, the application for amendment of the prayer came to be filed. By no stretch imagination, it can be contended that the prayer for amendment is beyond the period of limitation."

<https://hcservices.courts.gov.in/hcservices/> considered the submissions of the learned counsel appearing for the parties and perused the materials available on record.



12. The first respondent has filed the suit for declaration that the sale deed, dated 22.06.2007 executed by the respondents 2 to 7 through the 8<sup>th</sup> respondent in favour of the 9<sup>th</sup> respondent, is null and void and for injunction. The 9<sup>th</sup> respondent has borrowed monies on the security of the suit property based on the sale deed, dated 22.06.2007 from the petitioner bank. The petitioner, in view of the mortgage created by the 9<sup>th</sup> respondent, has contended that the first respondent is not the owner of the suit properties and he has not traced his title in the plaint and has not filed any document to prove the title. The first respondent has not mentioned about the Inam Abolition Proceedings and the respondents 2 to 9 and the petitioner are not parties to the said proceedings. Therefore, the said proceedings are not binding on them. In view of the said dispute, the first respondent has filed the application for amendment to amend the prayer "to include the relief of declaration in addition to permanent injunction claimed therein".

13. From the averments mentioned in the plaint, it is seen that the first respondent has stated that they are the owners of the suit property and they are in possession and in the revenue records, they are shown as owners. The respondents 2 to 7 are not Directors of the first respondent and they have no right to sell the suit properties.

14. In view of the serious disputes raised by the petitioner, the first respondent has filed the application for amendment. The Hon'ble Apex Court in the judgment reported in 2008 (4) SCC 594 [cited supra] held in paragraph 14 referred to above, when a serious dispute or cloud over the plaintiff's title in the defence of the defendant, then there is a need for the plaintiff to amend the plaint and convert the suit into one for declaration. The Hon'ble Apex Court also held that when the suit for injunction is dismissed, it would not have decided the issue of title, it will decide only the issue of possession. In view of the judgment of the Hon'ble Apex Court and in view of the averments made by the first respondent with regard to his title and possession, the amendment sought for by the first respondent does not introduce a new cause of action, new case or does not change the character of the suit. Further, the 1<sup>st</sup> respondent has filed application for amendment within 3 years from the date of filing of written statement by the petitioner. The issue of limitation was considered and decided by this Court in the order dated 30.01.2015, made in C.R.P.(MD)No.2560 of 2011, wherein at paragraph 12 referred to above, it has been held that the amendment sought for declaration is not barred by limitation, when the same is filed within 3 years from the date of filing of the written statement, when the defendant has disputed the title of the first respondent. It is well settled that a pre-trial amendment must be liberally considered and the learned I Additional District Judge has considered all the materials on record and the judgments



relied on by the learned counsel for the parties, in proper perspective and has allowed the application for amendment. There is no irregularity or illegality in the said order warranting interference by this Court.

15. In result, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To

The I Additional District Judge,  
Tirunelveli.

+1cc to Mr.A.SIVASUBRAMANIAN Advocate in SR. No.6945

SMN

SM/JM/17.02.2017/7P-3C

C.R.P. (MD) No.2612 of 2015 (PD)  
& M.P. (MD) No.2 of 2015  
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