



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date : 04.02.2020

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (PD) (MD)No.1026 of 2019

and

C.M.P(MD)Nos.5663 and 11700 of 2019

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Vaduga Naidu Munnetra Sangam,
Through its Secretary,
Kallar Road, Vadagarai,
Periyakulam, Theni District.

...Petitioner/Petitioner/Appellant

Vs.

1.R.Thuraipandi
2.Bajra Begam
3.Nallayam Perumal

... Respondents/Respondents/Respondents

Prayer : This Civil revision petition is filed under Article 227 of the Constitution of India, to call for the records relating to the order and decreetal order dated 26.02.2019 made in I.A.No.45 of 2017 in A.S.No.5 of 2016 on the file of Sub Court, Periyakulam, and to set aside the same and to allow the civil revision petition.

For Petitioner : Mr.V.Janakiramulu

For R1 : No Appearance

For R2 : Mr.V.Sriram

For R3 : Tapal Returned

ORDER

This petition has been filed to quash the order made in I.A.No.45 of 2017 in A.S.No.5 of 2016 on the file of Sub Court, Periyakulam.

2.The petitioner herein is the plaintiff and the respondents herein are the defendants in the suit.

3.The petitioner filed a suit for a prayer of permanent injunction against the defendants. That suit was dismissed by the Trial Court. Against which, the petitioner preferred an appeal in A.S.No.5 of 2016 on the file of the learned Principal Sub Court, Periyakulam. The petitioner filed a petition in I.A.No.45 of 2017 before the Principal Sub Court, Periyakulam, for a prayer to amend the plaint in the suit. That petition was dismissed by the learned First Appellate Court. Against which, the petitioner has preferred this revision petition.

4.The brief substance of the petition in I.A.No.45 of 2017 is as follows:-

<https://hcservices.ecourts.gov.in/hcservices/>



The petitioner filed a suit for a prayer of permanent injunction. The Suit property was gifted by the Periakulam Vadakarai Illam Jameendhar to the petitioner's Sangam on 31.12.1983. Thereafter, he has cancelled the gift deed and sold the same to the defendants. Since the defendants thereby interfere the possession of the plaintiff, the plaintiff filed a suit for permanent injunction. A settlement deed cannot be cancelled unilaterally. The Trial Court failed to frame issues regarding the declaration of title and a prayer for a declaration is to be impleaded in the suit. The defendants 1 and 3 are set as *ex-parte*.

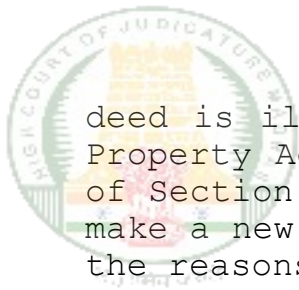
5.The brief substance of the counter filed by the second respondent in I.A.No.45 of 2017 is as follows:-

After the judgment was passed by the Trial Court, the petitioner is trying to introduce a new case. The main dispute is regarding the title and that the petitioner should have sought for a prayer of declaration much earlier. The petitioner is not entitled to introduce a new case at the stage of appeal. As per Section 58 of the Limitation Act, the prayer of declaration is to be sought for within a period of three years. If this petition is allowed, the plaint filed in the year 2000 has to be amended and the suit has to be remitted back. The registration of the plaintiff's Sangam bearing Registration No.14/1957 expired on 1982. On 31.03.1982, the Society was dissolved and the same was mentioned in the Government Gazette. Subsequently, the plaintiff Sangam was registered in Reg.No.45/88. There is no connection between both the Societies. Since, the earlier Society was dissolved, the gift deed in favour of the earlier Society stands cancelled and the legal heirs of the Jameendhar, sold the property to the defendants 1 to 3. Only to drag on the case, the petitioner has filed this petition.

6.The First Appellate Court after hearing both sides, dismissed the petition. Against which, the petitioner preferred this revision.

7.On the side of the revision petitioner, it is stated that the petitioner claimed title through a registered settlement deed dated 31.03.1982 and to give a complete adjudication and to avoid multiplicity of proceedings, an amendment has to be permitted and that an appeal is a continuation of suit proceedings and Section 58 of Limitation Act is not applicable.

8.The revision petitioner, has to take steps to sought for a relief of a declaration of title. The settlement deed confirms title and possession of the petitioner and the same was accepted and acted upon by mutation. The possession of the petitioner under Section 126 of the Transfer of property Act, is not revokable. As per Section 122 of the Transfer of Property Act, once the gift deed is accepted by the donee, unilateral cancellation of a registered settlement



deed is illegal and it is against the provision of the Transfer of Property Act. The dismissal of the amendment petition on the ground of Section 58 of the Limitation Act is wrong. The amendment will not make a new cause of action. The Appellate Court failed to appreciate the reasons for the amendment.

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9. On the side of the respondent, it is stated that the injunction suit was filed on the basis of the gift deed. After the cancellation of gift deed, the 1st defendant purchased 1971 sq.ft, the 2nd defendant purchased 4 1/2 cents and the 3rd defendant purchased 2 cents of the suit property from the sons of the Jameendhar. The settlement deed was cancelled in the year 1999. The suit was filed in the year 2000. Written statement was filed on 22.12.2000 disputing the title of the plaintiff. The suit was dismissed on 29.01.2016, as the plaintiff did not sought for a relief of declaration. Only at the stage of appeal, the petitioner preferred this petition seeking amendment in the original suit. For the past 16 years, the petitioner did not take any steps to amend the prayer, though, the title was questioned in the written statement itself.

10. The earlier Sangam was cancelled on 22.03.1982. Thereafter, only the settlement deed was cancelled by the donee, the original gift deed itself was not in favour of the present Sangam. That original gift was given in favour of the earlier Sangam.

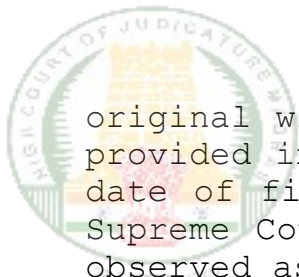
11. On the side of the petitioner, it is stated that the original suit was filed against three persons, who are the defendants 1 to 3. It is stated that the petition cannot be dismissed on the ground of limitation. A judgment of this Court published in **2009 (2) CTC 387**, is cited wherein it is held that amendment can be permitted at any stage of the suit for determining the real question in controversy.

"Amendment can be permitted at any stage of suit for determining real question in controversy - Amendment Application allowed preserving right of defendant to claim limitation restricting period to be calculated from date of filing of amendment instead of date of filing of suit."

12. On the side of the petitioner, it is stated that amendment is to be permitted at any stage of the case and appeal is a continuation of a suit. A Judgment of this Court published in **2016 -5-LW 810** is cited wherein it is decided the following issues:-

"Amendment of pleadings could be permitted at any stage - Appeal continuation of suit - Amendment necessary."

13. On the side of the respondent, it is stated that in the
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original written statement, the title was denied and the limitation provided in the Article 58 of Limitation Act is applicable from the date of filing of the written statement. A Judgment of the Hon'ble Supreme Court published in **(2016) 1 SC 332**, is cited wherein it is observed as follows:-

"In original written statement filed on 16.05.1990 defendant had clearly denied plaintiff's title to suit property - Thus, in view thereof, held, right to sue for declaration of title first arose on 16.05.1990 - In this way, period of limitation of 3 years for filing suit for declaration of title, as provided under Article 58, Limitation Act, 1963, continued from 16.05.1990 till 15.05.1993 - Hence, relief as to declaration of title added by amendment in 2002, was barred by limitation- Suit rightly dismissed by High Court on ground of limitation."

14.On the side of the respondent, it is further stated that even in the written statement, the respondent denied the title of the petitioner in spite of the same the petitioner has not taken any steps to amend the prayer in the suit and the amendment at this stage was barred by limitation. A judgment of this Court published in **2017 (2) MWN (Civil) 18** is cited wherein it is decided the following issues:-

*"Considering the facts and circumstances of the present case along with the said decision, the original prayer of Suit is preferential right against the Defendant. The suit in O.S.No.145 of 1986 is filed by the First Respondent/Appellant/Plaintiff in the year 1986. Written Statement was filed in the year 1987 and Additional Written Statement was filed in the year 1990. Even in the Additional Written Statement, the Revision Petitioner has specifically denied that the First Respondent/Plaintiff therein is not entitled to the relief as prayed in the Suit. In spite of that, they have not taken any steps to amend the prayer in the said Suit. Therefore, as per the dictum laid down by the Hon'ble Supreme Court in **L.C.Hanumanthappa V.H.BShivakumar, 2015 (6) CTC 562 (SC) : 2016 (1) SCC 332**, in the present case on hand, the Amendment Application filed to amend the prayer for Declaration to set aside the Sale Deed is barred by limitation and the Application cannot be allowed."*

15.On the side of the respondent, a Judgment in **S.L.P. (CIVIL) No.19188 of 2010 in Civil Appeal No.1669 of 2019** is cited wherein the Hon'ble Supreme Court has held that the proviso to Order 6 Rule 17 of CPC prevents an application for amendment of pleadings from being allowed after the Trial Court has commenced.



"The proviso to Order VI Rule 17 of the CPC virtually prevents an application for amendment of pleadings from being allowed after the trial has commence, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of the trial. The proviso, to an extent, curtails absolute discretion to allow amendment at any stage. Therefore, the burden is on the person who seeks an amendment after commencement of the trial to show that in spite of due diligence, such an amendment could not have been sought earlier. There cannot be any dispute that an amendment cannot be claimed as a matter of right, and under all circumstances."

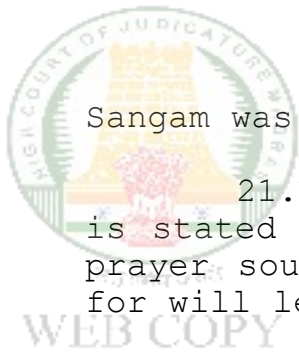
16. On the side of the respondent, it is further stated that the defendants 1 and 3 sold a portion of the suit properties to the Jameendhar's sons and now the revision petitioner purchased that shares for a valuable consideration from the sons of the Jameendhar thereby they accepted the cancellation of gift deed and accepted the title of the defendants 1 and 3 in a portion of the suit properties. They accepted the title of the Jameendhar's sons. Copy of the sale deed was marked along with the additional type set.

17. It is stated that the claim of the petitioner is that the Trial Court has failed to frame an issue regarding declaration. When the petitioner did not sought for a relief of declaration, there was no necessity for the Trial Court to frame an issue.

18. It is seen that the respondent denied the title of the petitioner in the written statement filed on 21.02.2000. The reason for not amending the suit at that time itself was not stated in the petition. Under the proviso to Order 6 Rule 17 of CPC, it is the duty of the petitioner to prove that inspite of due diligence, the party could not have raised the matter before the commencement of trial. No such reason is stated in the petition to prove that the petitioner performed his duty with due diligence.

19. The prayer of declaration under Article 58 of the Limitation Act is barred by limitation. The respondent disputed the title deed dated 22.01.1991 and the prayer for declaration has to be sought for within three years from the date of filing of the written statement. Only at the stage of first appeal, the petitioner has now come forward with this petition after 16 years from the date of filing of the written statement.

20. It is seen that the petitioner purchased a portion of the property from the sons of the Jameendhar, who purchased a portion of the property from the defendants 1 & 3. It is stated that the present Sangam was registered only in the year 1988 and the earlier



Sangam was dissolved in 1982 itself.

21.No reasons for the delay in filing the amendment petition is stated in the petition. The petitioner failed to prove that the prayer sought for was not barred by limitation. The prayer sought for will lead to a fresh trial.

22.In the above circumstance, there is no sufficient reasons to allow the revision. Accordingly, the order passed in I.A.No.45 of 2017 in A.S.No.5 of 2016 on the file of Sub Court, Periyakulam, dated 26.02.2019, is hereby, confirmed and the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

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Sub Assistant Registrar(CS)

dss

To
The Sub Judge,,
Periyakulam.

+1 CC to M/s.V.SRIRAM, Advocate (SR-4841[F] dated 05/02/2020)
+1 CC to M/s.V.JANAKI RAMULU, Advocate (SR-4981[F]

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