

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 05.08.2021

Delivered on : 13.08.2021

CORAM

THE HONOURABLE Mr. JUSTICE G.CHANDRASEKHARAN

CRP. (PD) No. 526 OF 2019
and C.M.P. No.3456 of 2019

1.Thai Sai Nala Viduthi Dharmasthabanam,
Nazarathpettai Village,
Register No.560/2005
Rep. By President Parthasarathy
S/o. Kannan, Residing at
Varadhappamudhaliyar Street,
Nazarathpettai Village and Post,
Chennai – 600 123.

2.K.Parthasarathy

... Petitioners

Vs.

1.Narayana Chettiyar
2.Thai Sai Nala Viduthi Dharmasthabanam,
Nazarathpettai Village,
Register No.426/1999
Rep. By President Parthasarathy
S/o. Kannan, Residing at
Varadhappamudhaliyar Street,
Nazarathpettai Village and Post,
Chennai – 600 123.

3.Ramesh

4.Karthikeyan

5.The Registrar of Societies,
Registrar Office Campus,
Saidapet,
Chennai – 600 015.

... Respondents

Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 24.10.2018 and made in I.A. No.238 of 2017 in O.S. No.155 of 2011 on the file of the learned Principal District Munsif Judge, Poonamallee and allow this present Civil Revision Petition.

For Petitioners : Mr. M.Rajasekar

For Respondent -1 : Mr. A.E.Ravichandran

2-4 : No appearance

5 : Dr. S.Suriya

Government Advocate

ORDER

This Civil Revision Petition is filed against the order of learned Principal District Munsif Judge, Poonamallee, passed in I.A. No.238 of 2017 in O.S. No.155 of 2011, dated 24.10.2018.

2. I.A. No.238 of 2017 was filed under Order 6 Rule 17 CPC for amending the plaint, especially the prayer. It is the case of the first

respondent/plaitiff that Thai sai Nala Vidudhi Dharmastapanam Society was registered as Society No.243 of 1973 with one Chellappa Chetty as its president. This society purchased the house site from one Sadasivam on 04.03.1976. A building was constructed by the society for housing a maternity home and it came to be stopped when it reached lintel level and the building could not be completed for want of funds. The president and other members of society have become dormant. The first respondent is the surviving member of the said society and he is one among the founding members of the society. The second petitioner had registered a fake society in the name of Thai sai Nala Vidudhi Dharmastapanam in registration No.426 of 1999 and again he registered another fake society in registration No.560 of 2005. With the help of these fake societies, he created a rental agreement dated 22.02.2008 in favour of his driver, the third respondent herein, and he executed a lease deed dated 06.03.2008 in favour of his son, the fourth respondent. Not only that he executed a settlement deed in respect of the suit property in favour of his son, the the fourth respondent on 08.01.2013. The fourth respondent filed a suit in O.S. No.3 of 2014 on the file of Sub Court, Poonamallee, claiming title to the suit property on the basis of a registered settlement deed dated 08.01.2013. The second petitioner and the fourth respondent created encumbrance over the suit property by creating settlement deed dated 08.01.2013. Originally the suit was

filed for relief of declaration that the rental agreement dated 22.02.2008 in favour of the third respondent and lease agreement dated 06.02.2008 in favour of the fourth respondent to be declared as null and void and not binding the original society namely, Thai Sai Nala Viduthi Dharmastapanam, registered as society No.243 of 1973. In view of the execution of settlement deed by the second petitioner in favour of his son, the fourth petitioner, in respect of the suit property, there is a necessity to amend the plaint and the prayer by including the following reliefs:

" (C-1) declaring that the settlement deed dated 08.01.2013 registered as Document No.406/2013 executed by 3rd defendant in favour of 5th defendant is null and void and not acted upon.

(C-2) declaring the registration of Thai Sai Nala Viduthi Dharmastapanam Nazarathpettain village registered as No.426 of 1999 on the file of The Registration of societies (The Sub Registrar) Saidapet is null and void;

(C-3) granting permanent injunction restraining the 3rd defendant arthasarathy his men, servants and agents acting as president of Thai Sai nala Viduthi Dharmastapanam Nazarathpettai Village registered as No.426 of 1996 on the file of The Registration of Societies (The Sub Registrar) Saidapet is null and void;

(C-4) declaring the registration of Thai Sai Nala Viduthi Dharmastapanam Nazarathpettai Village registered as No.560 of 2005 on the file of The Registration of Societies (The Sub Registrar) Saidapet is null and void;

(C-5) granting permanent injunction restraining the 3rd defendant parthasarathy his men, servants and agents acting as president of Thai Sai Nala Viduthi Dharmastapanam Nazarathpettai Village registered as No.560 of 2005 on the file of The Registration of Societies (The Sub Registrar)

Saidapet.”

3.This amendment petition was resisted by the petitioners and other respondents alleging that the first respondent knew about the registration of these societies even at the time of filing the suit. However, he has not chosen to seek the prayers to declare the first and second defendant societies as null and void. The suit was filed in the year 2011. The amendment petition was filed only in the year 2017. The aforesaid prayers are barred by limitation. The first defendant is non-existent now and therefore the suit is bad for misjoinder of party. The second petitioner filed a petition to reject the plaint under Order 7 Rule 11 CPC and as a counter blast to that petition, the amendment petition was filed. First respondent filed a petition to transfer the case in Tr. O.P. No.103 of 2014 and that was dismissed. Without arguing the petition filed to reject the plaint, this petition is filed only to protract the proceedings. The first respondent has no locus standi to file a suit. The property is in possession and enjoyment of the second petitioner. First respondent ought to have claimed these prayers at the time of filing the suit and he can not claim now,as they are barred by limitation.

4. Learned trial Judge, on considering the submissions made, allowed the petition on the ground that the trial has not yet commenced in this case and no prejudice would be caused to the defendants if the amendment is allowed.

Importantly, the proposed amendment would help the Court in comprehensively deciding the issues between the parties. In this view of the matter, the trial Judge allowed the petition. Against the said order, the petitioners, who are defendants, preferred this civil revision petition before this Court.

5. Learned counsel appearing for the petitioners submitted that the suit was filed in the year 2011, for the relief of declaring the rental agreement in favour of the fourth defendant and lease agreement in favour of the fifth defendant to be declared as null and void. Now this petition is filed to include the aforesaid prayers as additional prayers by way of an amendment. It is the case of the learned counsel for the petitioner that the plaintiff who is the first respondent in this petition knew very well about the existence of defendants 1 and 2 society even at the time of filing suit. However, he has not sought for these prayers when he filed the suit. He reiterated that the suit having been filed in 2011, amendment petition can not be filed in 2017 as it was barred by limitation. If these amendments are allowed, the entire scope and nature of the suit will be totally altered. He further submitted that without considering that the proposed amendments are barred by limitation, the learned trial Judge has wrongly allowed the amendment petition. Therefore, he seeks to set aside the order passed by the learned trial Judge.

6. In support of his submissions he pressed into service, the judgments reported in 1996 (2) Supreme 321, 2016 (1) SCC 332, 2012 1 Law Weekly 74 for the proposition that if any right is accrued to the opposite party and the claim is barred by limitation, that cannot be undone by way of amendment. The relevant portion of the case reported in 1996(2) Supreme 321 is extracted as follows:

“In the present case, the gift deed was executed and registered as early as July 28, 1978 which is a notice to everyone. Even after filing of the written statement for 3 years no steps were taken to file the application for amendment of the plaint. Thereby the accrued right in favour of the respondents would be defeated by permitting amendment of the plaint. The High Court, therefore, was right in refusing to grant permission to amend the plaint.”

In the case of *L.C. Hanumanthappa Vs. H.B. Shivakumar* reported in 2016 (1) SCC 332, the Hon'ble Supreme Court held as follows:

“...

Even though the prayer for amendment to include the relief of specific performance was made about 11 years after the filing of the suit, and the same was allowed after 12 years of the filing of the suit, such an amendment in the facts of the case cannot relate back to the date of filing of the original plaint, in view of the clear bar under Article 54 of the Limitation Act. Here in this case, the inclusion of the plea of specific performance by way of amendment virtually alters the character of the suit, and its pecuniary jurisdiction had gone up and the plaint had to be transferred to a different Court. This Court held in

Vishwambhar Vs. Laxminarayan [(2001) 6 SCC 163], if as a result of allowing the amendment, the basis of the suit is changed, such amendment even though allowed, cannot relate back to the date of filing the suit to cure the defect of limitation.”

In the case of *K.Vekataraman Chinna Padayachi & Another Versus Dhanalakshmi & Others*, reported in 2012 1 LW 74, this Court has held as follows:

“...

However in the present case on hand, as already held, the respondents have filed an application for amendment, admittedly after 5 years from the date of filing of the report of the Advocate Commissioner who has pointed out about the construction that has been put up in the common lane. Hence, I am of the considered view that there is no disputed question of fact with common lane. Hence, I am of the considered view that there is no disputed question of fact with regard to limitation, which requires to be considered only at the time of final disposal of the matter.

...

16. *In view of the above stated position, I am of the considered view that the amendment that has been sought for by the respondents which was allowed by the Court below, is on the face of it is barred by limitation.*

17. *In the judgment reported in (2007) 5 Supreme Court Cases 602, Usha Balasaheb Swami V. Kiran Appso Swami, the Hon'ble Apex Court has held that if the amendment do no result in causing grave injustice and irretrievable prejudice to the plaintiff in the suit, displacing him completely, the same can be allowed. In the given case on hand, as stated already, the proposed amendment will cause prejudice to the other side, since the other side may not be in a position to raise a plea of limitation, at the final point of time.*

...

19. In view of the above stated position, I am of the considered view that the Court below had erroneously allowed the application preferred by the respondents, without considering the question of limitation.”

7.Learned counsel for the first respondent submitted that the second petitioner is no way involved with the original Thai Sai Nala Viduthi Dharmastapanam. He further submits that second petitioner is a land grabber. Only with the intention to grab the suit property he floated these two societies and then created encumbrance over the property by executing rental agreement and lease agreement in favour of his driver, the third respondent and his son, the fourth respondent. Subsequently, he executed a settlement deed in favour of his son pending suit, claiming that the suit property belonged to him. It is a clear attempt to usurp the property of the society. As a founding member of the society first respondent is entitled to file a suit to save the property of the society. On the basis of the settlement deed executed by the second petitioner in favour of his son, he filed a suit claiming title over the property. Therefore, the amendment is necessitated. He further submitted that when cause of action arose during pendency of suit, proposed amendment should be granted. While considering the amendment petition, the real controversy in the issue between the parties should be the basis for the grant and non grant of the prayer for amendment. Therefore, the learned counsel for the first respondent submitted

that the proposed amendment is absolutely necessary for deciding the issues between the parties comprehensively and conclusively.

8.The learned counsel for the first respondent relied upon the judgment of Hon'ble Supreme Court in the case of *Rajesh Kumar Aggarwal and others Vs. K.K.Modi and others*, reported in (2006) 4 Supreme Court Cases 385, where it is held as hereunder:

"...

17. *In our view, since the cause of action arose during the pendency of the suit, proposed amendment ought to have been granted because the basic structure of the suit has not changed and that there was merely change in the nature of relief claimed. We fail to understand if it is permissible for the appellants to file an independent suit, why the same relief which could be prayed for in the new suit cannot be permitted to be incorporated in the pending suit.*

18. *As discussed above, the real controversy test is the basic or cardinal test and it is the primate duty of the Court to decide whether such an amendment is necessary to decide the real dispute between the parties. If it is, the amendment will be allowed; if it is not, the amendment will be refused. On the contrary, the learned Judges of the High Court without deciding whether such an amendment is necessary have expressed certain opinions and entered into a discussion on merits of the amendment. In cases like this, litigation, to preserve and safeguard the rights of both parties and to subserve the ends of justice. It is settled by a catena of decisions of this Court that the rule of amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in the larger interest of doing full and complete justice to the parties before the Court."*

9. As narrated above, the suit was filed for relief of declaring that the rental agreement and lease agreement in favour of respondents 3 and 4 as null and void. It is seen from the plaint averments that even at the time of filing plaint, the plaintiff knew very well the existence of defendants 1 and 2 society. However, the first respondent / plaintiff has not chosen to seek the relief of declaration that the registration of the societies as null and void. The suit was filed in the year 2011 but the amendment petition was filed only in the year 2017. Therefore, this Court is of the considered view that the prayers in amendment petition C2 to C5 are barred by limitation. However, the prayer with regard to declaration that the settlement deed dated 08.01.2013, executed by the third defendant in favour of the fifth defendant is null and void and not acted upon, in the considered view of the Court, it is not hit by limitation. There is no dispute that the property belonged to Thai Sai Nala Viduthi Dharmastapanam, which was registered as society No.243 of 1973. Even in the written statement of the defendants, there is no denial that the suit property did not belong to the aforesaid society. However, the defendants submitted that the purpose for which the property was acquired is not fulfilled because there is no income for fulfilling the ambition for which the property was acquired. The second petitioner claimed that he has spent money from his pocket for availing electricity connection, providing roof to the building and putting up lights. He

also claimed that to augment the income, he took steps to lease out the property to the third parties. It is the specific case of the first respondent that the second petitioner had executed the settlement deed in respect of the suit property in favour of his son, the fourth respondent. This particular allegation is not denied by the second petitioner. The fourth respondent filed the suit in O.S. No.3 of 2014 claiming title to the suit property on the basis of settlement deed executed by the second petitioner in his favour on 08.01.2013. The second petitioner admitted in the counter that the suit is pending and he wanted the first respondent to contest the suit. It is clear that the second petitioner had executed a settlement deed in respect of the suit property, which belong to Thai Sai Nala Viduthi Dharmastapanam, registered as society No.243 of 1973, in favour his son, during the pendency of the suit. The fourth respondent on 08.01.2013, filed a suit in O.S. No.3 of 2014 before the Sub Court, Poonamallee, claiming title on the basis this settlement deed. These developments had happened after filing of the suit and when the suit is pending. Therefore, this Court is of the considered view that the proposed prayer C1, in the amendment petition, that declaring the settlement deed dated 08.01.2013 registered as document No.406 of 2013 executed by third defendant in favour of the fifth defendant is null and void and not acted upon, is absolutely necessary for a binding adjudication in this case.

10. In this view of the matter, the order passed by the learned Principal District Munsif Judge, Poonamallee, in I.A. No.238 of 2017 in O.S. No.155 of 2011, is modified to the extent by upholding the amendment with regard to inclusion of Para 21 'a', prayer (C-1) and the corresponding valuation. The order of the learned Principal District Munsif Judge, Poonamallee, in allowing prayer C2 to C5, the corresponding valuation is hereby set aside, as barred by limitation. This Civil Revision Petition is allowed in part on the aforesaid lines. No costs. Consequently, connected miscellaneous petition is closed.

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Index: Yes / No

Speaking order / Non-speaking order

Internet: Yes / No

Copy To:

The Principal District Munsif Judge,

Poonamallee.

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G.CHANDRASEKHARAN. J.,

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Pre-delivery Order in
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