

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2021

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.PD.No.2861 of 2015 and
MP.No.1 of 2015

M.P.Lakshmi

..Petitioner

Vs.

1.Sellammal
2.Chandran
3.Sidheswaran @ Gandhi
4.Thangamani

..Respondents

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order of the learned II Additional District Munsif, Salem in IA.No.448 of 2014 in OS.No.771 of 2009 dated 05.01.2015.

For Petitioner : M/s.J.Prithivi
for Mr.S.Kaithamalai Kumaran

For Respondents : Mr.D.Shivakumaran

ORDER

This civil revision petition is directed as against the fair and decreetal order passed in IA.No.448 of 2014 in OS.No.771 of 2009 dated

05.01.2015 on the file of the learned II Additional District Munsif, Salem dismissing the petition for amendment. The petitioner is the plaintiff who filed suit for recovery of possession in respect of the suit schedule property. While the case was posted for cross examination of PW1, the petitioner filed petition to amend the plaint thereby include the prayer of declaration in respect of the suit schedule property.

2. The learned counsel for the petitioner would submit that it is the second round of litigation between the petitioner and the respondents. In respect of the very same property, already the petitioner filed suit for injunction and the same was decreed in her favour. Even then, again in the year 2009, the respondents encroached some portion of the suit schedule property. Therefore, the petitioner was constrained to file another suit for recovery of possession. Though, the respondents make any cloud over the property, the petitioner filed petition to include the prayer of declaration in respect of the suit property. She further submitted that by amending the plaint to include the prayer of declaration, it would avoid multiplicity of litigation between them and also no prejudice would be caused to the respondents by adding the prayer of declaration.

3. Per contra, the learned counsel for the respondents submitted that initially the suit was filed by the petitioner on 29.08.1999. On 15.12.2009, the respondents filed written statement and categorically denied the title of the plaintiff over the suit schedule property. Even then, the petitioner failed to take steps to amend the plaint for the prayer of declaration within a period of three years. Admittedly, the petitioner filed petition for amendment only on 10.11.2014. Therefore, it is clearly barred by limitation and the trial court rightly dismissed the petition for amendment filed by the petitioner herein.

4. Heard M/s.J.Prithivi, the learned counsel for the petitioner and Mr.D.Shivakumaran, the learned counsel for the respondents.

5. The petitioner is the plaintiff, who filed suit for recovery of possession in respect of the suit schedule property as against the respondents. When the matter was posted for cross examination of PW1, the petitioner filed petition for amendment of prayer of declaration in respect of the suit schedule property. On perusal of the records, the suit was filed on 29.08.2009, the respondents filed written statement on 15.12.2009 where categorically averred that the father of the plaintiff has no right over the property to execute any document in respect of the suit schedule property. Further he died on 05.09.2003 and as such the plaintiff never became absolute owner of the suit

schedule property. When the respondents categorically denied the title in respect of the suit schedule property, the petitioner ought to have filed the petition for declaration in time. The Article 58 of the Limitation Act, 1963 where when the right to sue first accrues, parties to file suit for declaration within a period of three years. In the present suit, cause of action arose for the prayer of declaration on 15.12.2009. It is clearly barred by limitation. The learned counsel for the respondent relied upon the judgment in the case of **L.C.Hanumanthappa Vs. H.B.Shivakumar** reported in (2016) 1 SCC 332, wherein the Hon'ble Supreme Court of India has held as follows:

13. We have heard learned counsel for the parties. It is not disputed that Article 58 of the Limitation Act would apply to the amended plaint inasmuch as it sought to add the relief of declaration of title to the already existing relief for grant of permanent injunction. In **Khatri Hotels Private Limited & Anr. v. Union of India & Anr.**, (2011) 9 SCC 126, this Court while construing Article 58 of the Limitation Act held as follows:-

“Article 58 of the Schedule to the 1963 Act, which has a bearing on the decision of this appeal, reads as under:

“THE SCHEDULE Period of Limitation [See Section 2(j) and 3]
First Division-Suits Description of suit Period of Time from which period
limitation begins to run * * * Part III- Suits Relating To Declarations * * *

58. To obtain any other Three Years When the right to sue first accrues.

declaration.

[Article 120](#) of the Schedule to the [Limitation Act](#), 1908 (for short “the 1908 Act”) which was interpreted in the judgment relied upon by Shri Rohatgi reads as under:

“Description of suit Period of Time from which period begins to run limitation

120. Suit for which no period Six years When the right to sue accrues.” of limitation is provided elsewhere in this Schedule.

The differences which are discernible from the language of the above reproduced two articles are:

(i) The period of limitation prescribed under [Article 120](#) of the 1908 Act was six years whereas the period of limitation prescribed under the 1963 Act is three years and,

(ii) Under [Article 120](#) of the 1908 Act, the period of limitation commenced when the right to sue accrues. As against this, the period prescribed under [Article 58](#) begins to run when the right to sue first accrues.

[Article 120](#) of the 1908 Act was interpreted by the Judicial Committee in [Bolo v. Koklan](#) [(1929-30) 57 IA 325 : AIR 1930 PC 270] and it was held: (IA p. 331) “There can be no ‘right to sue’ until there is an accrual of the right asserted in the suit and its infringement, or at least a clear and unequivocal threat to infringe that right, by the defendant against whom the suit is instituted.” The same view was reiterated in [Annamalai Chettiar v. Muthukaruppan Chettiar](#) [ILR (1930) 8 Rang 645] and [Gobinda Narayan Singh v. Sham Lal Singh](#) [(1930-31) 58 IA 125].

In [Rukhmabai v. Lala Laxminarayan](#) [AIR 1960 SC 335 : (1960) 2 SCR 253] , the three-Judge Bench noticed the earlier judgments and summed up the legal position in the following words: (Rukhmabai case

“33. ... The right to sue under [Article 120](#) of the [1908 Act] accrues when the defendant has clearly or unequivocally threatened to infringe the right asserted by the plaintiff in the suit. Every threat by a party to such a right, however ineffective and innocuous it may be, cannot be considered to be a clear and unequivocal threat so as to compel him to file a suit. Whether a particular threat gives rise to a compulsory cause of action depends upon the question whether that threat effectively invades or jeopardizes the said right.” While enacting [Article 58](#) of the 1963 Act, the legislature has designedly made a departure from the language of [Article 120](#) of the 1908 Act. The word “first” has been used between the words “sue” and “accrued”. This would mean that if a suit is based on multiple causes of action, the period of limitation will begin to run from the date when the right to sue first accrues. To put it differently, successive violation of the right will not give rise to fresh cause and the suit will be liable to be dismissed if it is beyond the period of limitation counted from the day when the right to sue first accrued.”

6. The Hon'ble Supreme Court of India held that It is merely a particular case of this general rule that where a plaintiff seeks to amend by setting up a fresh claim in respect of a cause of action which since the institution of the suit had become barred by limitation. In the case on hand, admittedly the written statement was filed on 15.12.2009 and the petition for amendment seeking including the prayer of declaration filed only on 10.11.2014. The learned counsel for the petitioner would submit about the

doctrine of relation back, namely relating back to the amendment when the suit was originally filed. In this regard, it is relevant to extract paragraph 29 of the same judgment as follows:

29. Applying the law thus laid down by this Court to the facts of this case, two things become clear. First, in the original written statement itself dated 16th May, 1990, the defendant had clearly put the plaintiff on notice that it had denied the plaintiff's title to the suit property. A reading of an isolated para in the written statement, namely, para 2 by the trial court on the facts of this case has been correctly commented upon adversely by the High Court in the judgment under appeal. The original written statement read as a whole unmistakably indicates that the defendant had not accepted the plaintiff's title. Secondly, while allowing the amendment, the High Court in its earlier judgment dated 28th March, 2002 had expressly remanded the matter to the trial court, allowing the defendant to raise the plea of limitation. There can be no doubt that on an application of Khatri Hotels Private Limited (supra), the right to sue for declaration of title first arose on the facts of the present case on 16th May, 1990 when the original written statement clearly denied the plaintiff's title. By 16th May, 1993 therefore a suit based on declaration of title would have become time-barred. It is clear that the doctrine of relation back would not apply to the facts of this case for the reason that the court which allowed the amendment expressly allowed it subject to the plea of limitation, indicating thereby that there are no special or extraordinary circumstances in the present case to warrant the doctrine of relation back applying so that a legal right that had accrued in favour of the defendant should be taken away.

This being so, we find no infirmity in the impugned judgment of the High Court. The present appeal is accordingly dismissed.

Therefore, the doctrine of relation back is not applicable to the case on hand, and the trial court rightly dismissed the application filed by the petitioner as barred by limitation. As such, this Court finds no irregularity or infirmity in the order passed by the court below. In respect of other amendment sought for by the petitioner in the B schedule property to add the extent and four boundaries of the B schedule property, as rightly held by the trial court that cannot be amended, since when the declaration prayer itself rejected, therefore the petitioner is not entitled to amend the extent and boundaries of the B schedule property.

7. Accordingly, this civil revision petition is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

07.01.2021

Speaking/Non-speaking order

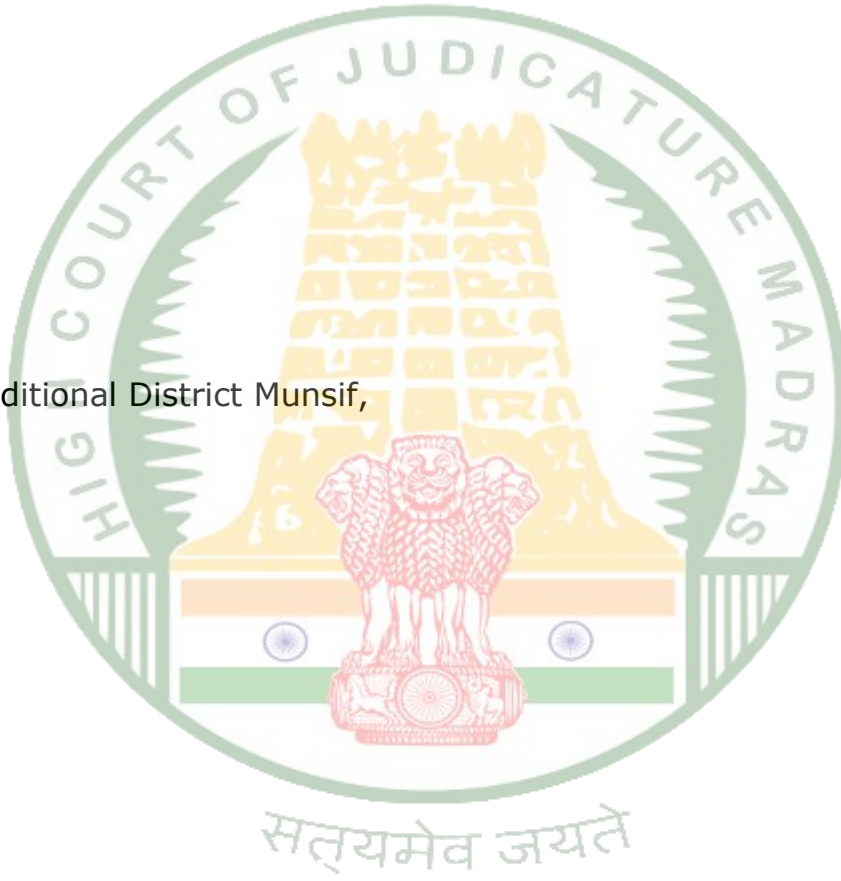
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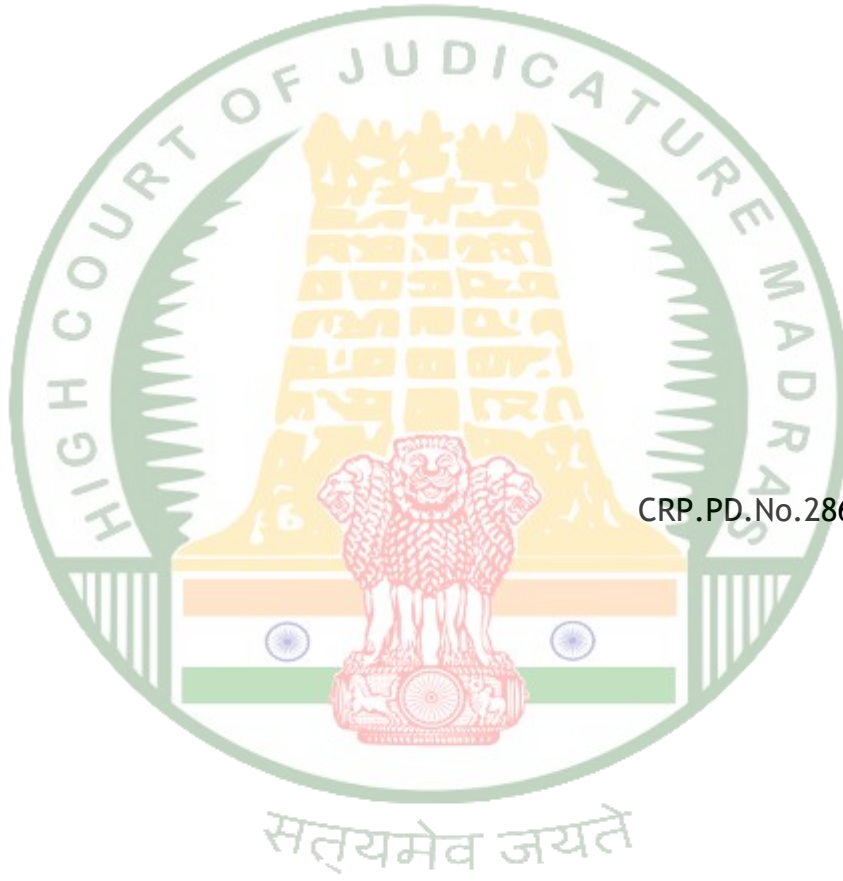
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