

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2021

CORAM

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

C.R.P.(PD).No.4014 of 2015
and M.P.No.1 of 2015

S.Neelayathatchi Ammal (died)

1. M.Gunasekaran
2. S.Kalaivannan
3. Usha Devi

... Petitioners

Vs.

1. Sa.Duraisamy
2. D.Vetri Thiagu
3. The Sub Registrar,
Neelankarai,
Chennai - 41.

... Respondents

Prayer :- Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order passed in I.A.No.1207 of 2014 in O.S.No.329 of 2005 dated 24.07.2015 on the file of the District Munsif Court, Alandur.

For Petitioners : Mr.B.Vijay

For Respondents

For R1 & R2 : Mr.S.Natarajan

R3 : Notice served.

ORDER

This Civil Revision Petition is directed as against the fair and decretal order dated 24.07.2015 passed by the learned District Munsif, Alandur, in I.A.No.1207 of 2014 in O.S.No.329 of 2005, thereby dismissing the petition for amendment filed by the petitioners herein.

2. The petitioners are the plaintiffs. They filed suit for permanent injunction in respect of the suit property as against the respondents herein. The respondents 1 & 2 filed their written statement on 09.11.2005. After the period of nine years, the petitioners filed this petition in I.A.No.1207 for amendment to include the prayer of declaration in respect of the suit property. The said petition was dismissed for the reason that it was filed in belated stage of the trial, when the petitioners had knowledge about the fact that the suit property already settled in favour of the respondents 1 & 2, in the year 2005 itself. Aggrieved by the same the present Civil Revision Petition.

3. The learned counsel appearing for the petitioners would submit that the petitioners filed petition for amendment of plaint to include the relief of declaration and it has to be considered liberally in order to avoid multiplicity of proceedings between the parties. The amendments sought for by the petitioners would not change the nature of the suit and it would not cause any prejudice to the respondents herein. While pending the suit, the respondents filed written statement stating that even before filing of the suit, the suit properties were settled, by the registered settlement deeds dated 03.03.2004 in favour of the first and second respondents herein by their father. Therefore the petitioners necessarily have to include the prayer of declaration in respect of the suit property declaring that the settlement deeds dated 03.03.2004 as null and void.

3.1. He further submitted that the Court below misconstrued the rule of due diligence adumbrated under Order 6 Rule 17 of C.P.C., which is not applicable for the amendments sought after commencement of trial. He further submitted that there is no absolute rule that in every case where a relief is barred because of limitation, an amendment should not be allowed.

Discretion in such cases depends on the facts and circumstances of the each case. In the present case, the suit property is claimed by the respondents by the settlement deeds dated 03.03.2004 executed by their father. Therefore if the petitioners are not allowed to amend the prayer and to include the prayer of declaration, it would cause multiplicity of proceedings between the parties. In support of his contention, he relied upon the following reported judgment :-

(i) (2004) 6 SCC 415 - Pankaja and anr Vs. Yellappa (dead) by LRs and ors

(ii) (2018) 2 SCC 132 - Mohinder Kumar Mehra Vs. Roop Rani Mehra and ors

4. Per contra, the learned counsel appearing for the respondents would submit that originally, the petitioners filed suit for injunction as against the respondents herein on 09.05.2005. On 09.11.2005 itself, the respondents 1 & 2 herein filed written statement and specifically stated that the suit property belonged to their father and the same was settled in their favour by the registered settlement deeds dated 03.03.2004. Thereafter the trial was commenced and on 04.08.2014, the petitioners came forward with

the present petition for amendment to include the prayer of declaration to declare that the settlement deeds dated 03.03.2004 executed in favour of the respondents 1 & 2 as null and void. Therefore, the prayer sought for in the present petition is clearly barred by the provisions under Section 58 of the Indian Limitation Act. Therefore, the Court below rightly dismissed the petition and nothing warrant for this Court to interfere with the order passed by the Court below. He also relied upon the judgment dated **16.01.2012** passed by the Hon'ble Supreme Court of India in **Civil Appeal No.561 of 2012** in the case of **J.Samuel and ors Vs. Gattu Mahesh and ors.**

5. Heard Mr.B.Vijay, learned counsel appearing for the petitioners and Mr.S.Natarajan, learned counsel appearing for the respondents 1 & 2.

6. The petitioners are the plaintiffs. They filed suit for injunction in respect of the suit property as against the respondents herein. The respondents 1 & 2 filed their written statement on 09.11.2005 and categorically stated that the one Subbarayan settled his property in favour of

his father Samiappa Gounder and subsequently, the said Samiappa Gounder settled the suit property in favour of the respondents 1 & 2 herein by the registered settlement deeds dated 03.03.2004. Thereafter, on 04.08.2014 the petitioners filed this petition for amendment to include the prayer of declaration in the suit declaring that the settlement deeds executed in favour of the respondents 1 & 2 dated 03.03.2004 as null and void. The amendment sought for in the petition is as follows :-

"Particulars of amendment :-

*1. Add the following as para No.14B in the
plaint:-*

*14B. The plaintiffs state that the pending suit the
plaintiffs have come to know that the defendants 1
and 2 colluded with each other in connivance of
the 1st defendant's father and 2nd defendant's
grand father Mr.Samiyappa Gounder created two
settlement deed dated 03.03.2004 registered as
document No.1083 of 2004 and 1084 of 2004 on
the file of SRO Neelankarai. The 1st defendant is
the father of the 2nd defendant and both have
absolutely no right interest and title over the suit
property, however they created both the said*

settlement deeds in respect of the suit property without any iota or right over the suit property and the said settlement deeds will not bind the plaintiffs in any manner affecting their right, however both the documents have to be declared as null and void documents and not binding on the plaintiffs. The said settlement deeds have been made among the defendants 1 & 2 with intention to usurp the suit property and grab the same and the said documents sham, nominal, invalid and ab-initio void and ac-found documents, hence both the documents have to be declared as null and void.

2. Add the following along with para No.16.

The plaintiff further value the suit at Rs.1,000/- for each relief for the relief of declaration to declare settlement deeds as null and documents and pay Court fee of Rs.75.50 for each relief, under Section 24(d) of TNCF & S.V.Act. Thus the total value of the suit Rs.5,000/- and total Court fee paid is Rs.377.50

3. Add the following in para No.17 as prayer No.a and b

a) for a declaration to declare that the settlement deed executed in favour of 1st defendant Mr.Samiyappa Gounder dated 03.03.2004 registered as document No.1084 of 2004 on the file of SRO at Neelankarai in respect of suit property as null and void and not binding on the plaintiffs.

b) for a declaration to declare that the settlement deed executed in favour of 2nd defendant dated 03.03.2004 registered as document No.1083 of 2004 on the file of SRO at Neelankarai in respect of suit property as null and void and not binding on the plaintiffs.

4. The Existing prayers of a,b,c,d,e in para No.17 of the plaint may be substituted as prayer No.c,d,e,f,g."

7. The learned counsel appearing for the petitioners relied upon the judgment reported in **(2004) 6 SCC 415** in the case of **Pankaja and anr Vs. Yellappa (dead) by LRs and ors** in which, the Hon'ble Supreme Court of India held as follows :-

"13. But the question for our consideration is whether in cases where the delay has extinguished the right of the party by virtue of expiry of the period of the period of limitation prescribed in law, can the court in the exercise of its discretion take away the right accrued to another party by allowing such belated amendments?"

14. The law in this regard is also quite clear and consistent that there is no absolute rule that in every case where a relief is barred because of limitation an amendment should not be allowed. Discretion in such cases depends on the facts and circumstances of the case. The jurisdiction to allow or not allow an amendment being discretionary the same will have to be exercised in a judicious evaluation of the facts and circumstances in which the amendment is sought. If the granting of an amendment really subserves the ultimate cause of justice and avoids further litigation the same should be allowed. There can be no straight jacket formula for allowing or disallowing an amendment of pleadings. Each case depends on the factual

background of that case.

15. *This Court in the case of L.J. Leach and Co. Ltd. & Anr. Vs. Messrs. Jardine Skinner and Co. - A.I.R. 1957 S.C. 357 has held :-*

"It is no doubt true that Courts would, as a rule, decline to allow amendments, if a fresh suit on the amended claim would be barred by limitation on the date of the application. But that is a factor to be taken into account in exercise of the discretion as to whether amendment should be ordered, and does not affect the power of the Court to order it, if that is required in the interests of justice."

16. *This view of this Court has, since, been followed by a 3 Judge Bench of this Court in the case of T.N. Alloy Foundry Co. Ltd. Vs. T.N. Electricity Board & Ors. 2004 (3) SCC 392. Therefore, an application for amendment of the pleading should not be disallowed merely because it is opposed on the ground that the same is barred by limitation, on the contrary, application will have to be considered bearing in mind the discretion that is vested with the Court in allowing or disallowing such amendment in the interest of*

justice.

17. Factually in this case, in regard to the stand of the defendant that the declaration sought by the appellants is barred by limitation, there is dispute and it is not an admitted fact. While the learned counsel for the defendant-respondents pleaded that under Entry 58 of the Schedule to the Limitation Act, the declaration sought for by the appellants in this case ought to have been done within 3 years when the right to sue first accrued, the appellant-plaintiff contends that the same does not fall under the said Entry but falls under Entry 64 or 65 of the said Schedule of 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, therefore, both the courts below have seriously erred in not considering this question before rejecting the prayer for amendment. In such a situation where there is a dispute as to the bar of limitation this Court in the case of Ragu Thilak D. John Vs. S. Rayappan & Ors. 2001(2) SCC 472 (supra) has held :-
"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. The plea of limitation being disputed could be made a subject-matter of the issue after allowing the amendment prayed for."

18. We think that the course adopted by this Court in *Ragu Thilak D. John's case (supra)* applies appropriately to the facts of this case. The courts below have proceeded on an assumption that the amendments 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 amendments 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 Entries 64 or 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 (supra)*, 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. & Anr.*

8. He also relied upon another judgment reported in (2018) 2 SCC 132 in the case of ***Mohinder Kumar Mehra Vs. Roop Rani Mehra and ors***, in which our Hon'ble Supreme Court of India held as follows:-

"24. Looking to the object and purpose by

which limitation was put on permitting amendment of the pleadings, in substance, in the present case no prejudice can be said to have caused to the defendant since the evidence was led subsequent to the filing of the amendment application. We thus are of the view that looking to the purpose and object of the Proviso, present was a case where it cannot be held that amendment application filed by the plaintiff could not be considered due to bar of the Proviso.

.....
27. *In the facts of the present case, final determination as to whether the claim could be held to be barred by time could have been decided only after considering the evidence led by the parties. Whether plaintiff had any share in the property, which was sold in the year 2000 and what was the nature of his share and whether he can claim recovery of his share within twelve years were all the questions on which final adjudication could have been made after considering the evidence and at the stage of considering the amendment in the facts of the present case, it was too early to come to a*

conclusion that limitation was only three years and not twelve years as claimed by the plaintiff. The High Court on the one hand refrained from expressing any opinion and on the other hand has expressed his agreement with the view taken by the Additional District Judge rejecting the application as barred by time.

.....
29. *Although, learned counsel for the parties in their submissions have raised various submissions on the merits of the claim of the parties, which need no consideration by us since the only issue which has to be considered is as to whether the amendment application filed by the plaintiff deserves to be allowed or not. We make it clear that we have neither entered into merits of the claim nor have expressed any opinion on the merits of the claim of either party and it is for the trial court to consider the issues on merits while deciding the suit."*

In the above judgments, the Hon'ble Supreme Court of India held that the application for amendment of pleading should not be disallowed merely because it is opposed on the ground that the same is barred by limitation.

On contrary the application will have to be considered bearing in mind the discretion that is vested with the Court in allowing or disallowing such amendment in the interest of justice. There can be no straitjacket formula for allowing or disallowing an amendment of pleadings and each case depends on the factual background of that case.

9. In the case on hand, the petitioners filed the suit for bare injunction in respect of the suit property. After filing the written statement, the petitioners came to under stand that the suit property settled in favour of the respondents 1 & 2 herein. Therefore, the petitioners filed petition to include the prayer of declaration to declare that the settlement deeds executed in favour of the respondents 1 & 2 as null and void. The Court below dismissed the petition on the ground that the amendment sought for by the petitioners is ipso facto bared by limitation and amounts to introduction of new relief. The amendment sought for by the petitioners could not be declined. The dominant purpose of allowing the amendment is to minimise the litigation. The limitation is an arguable in the circumstances of the case. It is being disputed could be made a subject mater of the issue

after allowing the amendment.

10. The Hon'ble Supreme Court of India followed the case of ***L.J.Leach and Co. Ltd. Vs. Jardine Skinner and Co.***, in which it was held as follows:-

"It is no doubt true that Courts would, as a rule, decline to allow amendments, if a fresh suit on the amended claim would be barred by limitation on the date of the application. But that is a factor to be taken into account in exercise of the discretion as to whether amendment should be ordered, and does not affect the power of the Court to order it, if that is required in the interests of justice."

As per the above judgment the ground of limitation to be taken into account in exercise of the discretion as to whether the amendment should be ordered and does not affect the power of the Court to order it, if that it is required in the interest of justice.

11. Considering the facts and circumstances of the case, allowing

the present petition would curtail the multiplicity of the proceedings. Accordingly, the order dated 24.07.2015 passed by the learned District Munsif, Alandur, in I.A.No.1207 of 2014 in O.S.No.329 of 2005 is hereby set aside. The petitioners are permitted to amend the plaint and the respondents are at liberty to file their additional written statement for the amended plaint. The trial Court is directed to frame the limitation as one of the issue and decide the suit in accordance with law within a period of six months from the date of receipt of a copy of this order.

12. With the above directions, this Civil Revision Petition stands allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

09.02.2021

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order

rts

To

1. The District Munsif,
Alandur

2. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.

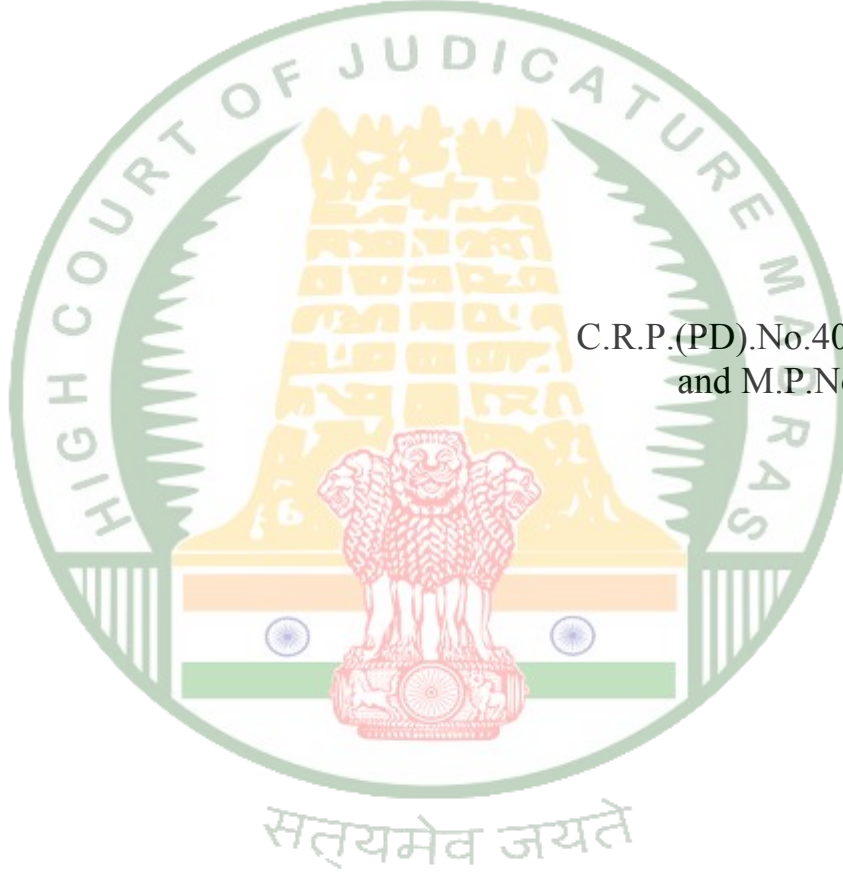


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