

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2021

CORAM

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

C.R.P.(PD).Nos.4543 and 4544 of 2015
and M.P.No.1 and 1 of 2015

Karuppuswamy ..Petitioner in both the CRPs

Vs.

Palaniammal ..Respondent in CRP.No.4543/2015
Valliathal ..Respondent in CRP.No.4544/2015

PRAYER in C.R.P.No.4543 of 2015: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the fair and final order dated 16.07.2015 passed in I.A.No.1254 of 2014 in O.S.No.468 of 2008 on the file of the District Munsif, Tiruppur.

PRAYER in C.R.P.No.4544 of 2015: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the fair and final order dated 16.07.2015 passed in I.A.No.1255 of 2014 in O.S.No.467 of 2008 on the file of the District Munsif, Tiruppur.

For Petitioner : Mr.Sabarish
in both the CRPs for Mr.S.K.Rakhunathan
For Respondents : Mr.N.Stalin
in both the CRPs

ORDER

These Civil Revision Petitions are directed as against the fair and decreetal orders passed in I.A.No.1254 of 2014 in O.S.No.468 of 2008 and I.A.No.1255 of 2014 in O.S.No.467 of 2008 on the file of the the District Munsif, Tiruppur.

2. The respondent in C.R.P.No.4543 of 2015 is the plaintiff in O.S.No.468 of 2008 and the respondent in C.R.P.No.4544 of 2015 is the plaintiff in O.S.No.467 of 2008. They are the daughters of the petitioner herein. They filed a suit for injunction. While pending suit, the plaintiffs filed a petition for amendment to include the prayer of declaration in the respective suit properties. Both the petitions were allowed.

3. The counsel for the petitioner would submit that the suit property belonged to the petitioner and the same is derived through the partition deed. As per the partition deed, the suit

property was let to him and thereafter he is in possession and enjoyment of the entire land measuring 2.41 acres by cultivating various crops. While being so, he executed settlement deed in favour of the respondents dated 12.04.2007. Subsequently, the petitioner canceled both the settlement deeds executed in favour of the respondents herein on 28.10.2008. Subsequent to the cancellation of the settlement deed, the present suits were filed by the respondents herein.

4. He further submitted that the petitioner categorically mentioned the patta and all other revenue documents that stands in his name and he is in possession and enjoyment of the entire suit property. The plaintiffs have no title or right over the property at any point of time. He further submitted that when there is a cloud over the property, the suit for bare injunction without seeking the relief of declaration is not maintainable.

5. On a perusal of the written statement filed by the petitioner, revealed that the original suit property is a family property and through partition deed he became absolute owner of the same. Thereafter, all the revenue records are mutated in his name and he is in possession and enjoyment and cultivating the same. While being so, he executed the settlement deeds in favour of the respondents on 12.04.2007. Thereafter, both the settlement deeds were cancelled by cancellation deeds dated 28.10.2008. Therefore, no title is transferred in favour of the respondents herein in respect of the suit property and the petitioner is in possession and enjoyment of the same and he is cultivating the entire property.

6. It is also avered that the suit is not maintainable without a prayer for declaration, when there is a cloud over the property. Even then, the respondents/ plaintiffs did not take steps to file a petition for amendment to include the prayer for declaration. Only on 17.12.2014 the respondent filed the petition for amendment to include the prayer of declaration in respect of the suit property. In this regard it is relevant to rely upon the judgment in *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."

7. 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 16.03.2009 and the petition for amendment seeking including the prayer of declaration filed only on 17.12.2014. The learned counsel for the petitioners 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.

8. In view of the above dictum laid by the Hon'ble Supreme Court of India, the cause of action arose for filing an injunction suit on 03.12.2008. The suit itself is filed on the strength of the settlement deed dated 12.04.2008. The petitioner filed written statement on 16.03.2009 and stated that the settlement deeds dated 12.04.2008 were cancelled by the cancellation deed dated 28.10.2008. Therefore, after lapse of 5 years from the date of filing the written statement the petition was filed for amendment to include the prayer of declaration. Therefore, the above judgment is squarely applicable in the case on hand. As per Article 58 of Limitation Act to constitute a suit for declaration when the right to sue accrues within a period of 3 years. Therefore, the prayer for declaration is clearly barred by limitation.

9. As such the orders passed by the trial court is perverse and illegal and it is liable to be set aside. Accordingly, the orders made in I.A.No.1254 of 2014 in O.S.No.468 of 2008 and I.A.No.1255 of 2014 in O.S.No.467 of 2008 on the file of the the District Munsif, Tiruppur is set aside and the Civil Revision Petitions are allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (C.S.VI)

/True Copy/

Sub Assistant Registrar

To

The District Munsif,
Tiruppur.

+1cc to Mr.S.K.Rakhunathan, Advocate Sr.No.1076

AKM /16.2.21/6p-3c/

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