

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.02.2021

PRONOUNCED ON : 15.03.2021

CORAM

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

C.R.P.(PD)Nos. 2879 & 2880 of 2016
and C.M.P.No.14584 of 2016

P.Mariappan

... Petitioner in
both CRPs

Vs.

P.Mohankumar

... Respondent in
both CRPs

Prayer in C.R.P.No.2879 of 2016:- Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 12.04.2016 made in I.A.No.569 of 2015 in O.S.No.49 of 2012 on the file of the District Munsif Court, Sankari.

Prayer in C.R.P.No.2880 of 2016:- Civil Revision Petitions are filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 11.02.2016 made in I.A.No.570 of 2015 in O.S.No.49 of 2012 on the file of the District Munsif Court, Sankari.

For Petitioner
in both CRPs : Mr.N.Manokaran
For Respondent
in both CRPs : Mr.P.Valliappan

COMMON ORDER

The Civil Revision Petitions in C.R.P.Nos.2879 & 2880 of 2016 are directed as against the fair and decreetal orders dated 12.04.2016 & 11.02.2016 passed by the learned District Munsif, Sankari in I.A.Nos.569 & 570 of 2015 in O.S.No.49 of 2012 respectively, thereby dismissing the petitions filed by the petitioner to receive the reply statement and to amend the plaint.

2. In both Civil Revision Petitions, the petitioner is the plaintiff and the respondent is the defendant. The petitioner filed suit for declaration and injunction in respect of his half share in the suit schedule property. The respondent filed written statement along with counter claim for recovery of possession in respect of the suit property. After the period of three years, the petitioner filed petition to receive the reply statement to the counter claim made by the respondent herein and also filed petition for amendment to

include the prayer for declaration declaring that the sale deed executed in favour of the respondent as null and void. Both petitions were dismissed by the trial and aggrieved by the same the present Civil Revision Petitions.

3. The learned counsel appearing for the petitioner would submit that the sale deed dated 11.04.2002, under which the respondent claiming recovery of possession, was obtained by playing fraud from the petitioner herein as such it is just and necessary to file the reply statement for the counter claim. The question of limitation is mixed question of law and fact and it cannot be gone into at the stage of deciding the petition to file a reply statement and also to include the prayer of declaration. In support of his submission, he relied upon the following reported judgments :-

i) 2018(1)TNCJ 441(SC) - Mohinder Kumar Mehra Vs. Roop Rani

Mehra and ors

ii) (2015) 3 MLJ 668 - Chitra Vs. Kannan

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

iv) (2005) 4 CTC 664 - Thiru Alankadu Immudi Ahora Dharma

Sivachariar Aiyra Vs. Udumalpet Samayapuram

Ayira Vaisya Sangam rep. by its President.

v) (2019) 15 SCC 628 - Varun Phawa Vs. Renu Chaudhary

vi) (2009) 15 SCC 528 - Olympic Industries Vs. Mulla Hussainay

Bhai Mulla Akberally and ors.

4. Per contra, the learned counsel appearing for the respondent would submit that the petitioner initially filed suit for declaration and permanent injunction in respect of half share of the suit schedule property. He filed suit on 15.02.2012. Immediately, on 25.06.2012, the respondent filed written statement with the counter claim on the strength of the sale deed dated 11.04.2002 executed by the petitioner in favour of the respondent herein. In fact, while examining the petitioner as P.W.1, he categorically admitted during his cross-examination that the respondent filed written statement with counter claim. Therefore, the petitioner had full knowledge about the counter claim filed by the respondent. Even then, he did not choose to file any reply statement for the counter claim made by the respondent herein. After commencement of trial that too after part of cross examination of P.W.1, the petitioner came forward with the present petition with ulterior motive to fill up the lacuna.

4.1. He further submitted that the petitioner filed the petition for amendment at the belated state. Therefore, the amendment sought to include the prayer of declaration is clearly barred by limitation, since the respondent filed written statement on 25.06.2012 itself. Whereas after the period of three years, this petition for amendment to include the prayer of declaration declaring that the sale deed executed in favour of the respondent as null and void. In support of his contention, he relied upon the judgments as follows:-

- i) AIR 1957 SC 363 - Prigonda Hongonda Patil Vs. Kalgonda Shidgonda Patil & ors*
- ii) AIR 1967 SC 96 - A.K.Gupta and Sons Ltd., Vs. Damodar Valley Corporation*
- iii) AIR 1995 SC 1768 - K.Raheja Constructions Ltd., Vs. Alliance Ministries and ors*
- iv) AIR 1996 SC 642 - Muni Lal Vs. The oriental Fire and Geneal Insurance Company Ltd and anr*
- v) AIR 1996 SC 2358 - Radhika Devi Vs. Bajrangi Singh and ors*
- vi) AIR 2007 SC 1478 - Shiv Gopal Sah @ Shiv Gopal Sahu Vs. Sita Ram Saraugi and ors.*
- vii) AIR 2009 SC (Supp) 2897 - M/s. Ravajeetu Builders and Developers Vs. M/s. Narayanaswamy and sons and ors.*
- viii) 2011 (2) CTC 28 - N.Lalitha and ors Vs. Manujothi Ashramam rep by its President and ors.*
- ix) 2011 (6) CTC 477 - Chinnu Padayachi and anr Vs. Dhanalakshmi and ors*
- x) AIR 2013 SC 3188 - Mashyak Grihnirman Sahakari Sanstha Maryadit Vs. Usman Habib Dhuka and ors.*
- xi) 2015 (6) CTC 562 - C.Hanumanthappa Vs. H.B.Shivakumar*
- xii) 2015 (5) CTC 629 - Dr.L.Ramachandran and anr Vs. K.Ramesh and ors*

- xii) 2016 (2) MWN (Civil) 75 - V.Padma @ Pappa and ors Vs. T.R.Mohan and ors**
xiv) 2017 (2) CTC 309 - M.Panneerselvam Vs. Susseela and ors
xv) AIR 2019 SC 72 - Jamila Begum (D) Thr. LRs. Vs. Shami Mohd. (D) Thr. LRs and anr
xvi) 2016 (1) LW 998 - L.C.Hanumathappa (dead) rep. by his LRs Vs. H.B.Shivakumar.
xvii) 2020 (7) SCC 366 - Dahiben Vs. Arvindbhai Kalyanji Bhanusali (Gajra) (D) Thr LRs & ors

5. Heard Mr.N.Manokaran, learned counsel appearing for the petitioner and Mr.P.Valliappan, learned counsel appearing for the respondent.

6. The petitioner is the plaintiff and he filed the suit for declaration, declaring his half share of the suit schedule property in his favour and consequential injunction on 15.02.2012. On receipt of the suit summon, the respondent appeared before the trial Court and filed written statement on 25.06.2012 with counter claim, claiming through sale deed dated 11.04.2002, and also sought for recovery of possession of the suit property. Thereafter in the year 2015, the petitioner filed his proof affidavit and he was also partly cross-examined by the respondent herein.

7. In fact, the petitioner admitted the fact that the respondent made counter claim in his written statement dated 25.06.2012, in respect of the suit property for recovery of possession. Even then, the petitioner did not choose to file reply statement for the counter claim. After the period of three years on 09.06.2015, the petitioner filed petitions to receive the reply statement and also for amendment of plaint to include the prayer of declaration, declaring that the sale deed dated 11.04.2002 executed in favour of the respondent herein as null and void.

8. The points for consideration in the present Civil Revision Petition is as follows :-

(1) Whether the petitioner can be permitted to file reply statement for the counter claim made by the respondent herein after the period of three years?

(2) Whether the amendment can be allowed to include the prayer of declaration, declaring that the sale deed dated 11.04.2002 as null and void after the period of three years from the date of filing of the written statement?

9. In this regard, the learned counsel appearing for the petitioner relied upon the judgment reported in **(2004) 6 SCC 415** in the case of **Pankaja and anr Vs. Yellappa (dead) by LRs and ors**, as follows :-

"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."

10. He also relied upon the judgment reported in **(2005) 4 CTC 664** in the case of **Thiru Alankadu Immudi Ahora Dharma Sivachariar Aiyra Vs. Udumalpet Samayapuram Ayira Vaisya Sangam rep. by its President**, in which this Court held as follows :-

"5. A perusal of the above judgments could set forth the following guidelines, while dealing with an application under Order 6 Rule 17 C.P.C., seeking for amendment of the prayer :

(12) In regard to the stand of the defendants that the declaration sought by the plaintiffs is barred by limitation, there is dispute and it is not an admitted fact. While the defendants pleaded that Under Entry 58 of the Schedule to the Limitation Act, the declaration sought for by the plaintiffs in this case ought to have been within three years when the right to sue first accrued, the plaintiffs contend that the same does not fall under the said

entry but falls under Entry 64 or 65 of the said Schedule to 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. In such a situation, where there is a dispute as to the bar of limitation, the amendment sought could not be declined. The dominant purpose of allowing the amendment is to minimise the litigation. The plea of limitation, being disputed, could be made a subject-matter of the issue, after allowing the amendment prayed for."

11. The learned counsel appearing for the petitioner also relied upon the judgment reported **2018(1)TN CJ 441(SC)** in the case of **Mohinder Kumar Mehra Vs. Roop Rani Mehra and ors**, as follows :-

"13.The Proviso to Order VI Rule 17 prohibited entertainment of amendment application after commencement of the trial with the object and purpose that once parties proceed with the leading of evidence, no new pleading be permitted to be introduced. The present is a case

where actually before parties could led evidence, the amendment application has been filed and from the order dated 14.02.2014, it is clear that the plaintiff's case is that parties has led evidence even on the amended pleadings and plaintiff's cases was that in view of the fact that the parties led evidence on amended pleadings, the allowing the amendment was mere formality. The defendant in no manner can be said to be prejudiced by the amendments since plaintiff led his evidence on amended pleadings also as claimed by him.

14.This Court in Chander Kanta Bansal Vs. Rajinder Singh Anand, (2008) 5 SCC 117 has noted the object and purpose of amendment made in 2002. In Para 13, following has been held:-

“13. The entire object of the said amendment is to stall filing of applications for amend- ing a pleading subsequent to the commencement of trial, to avoid surprises and the parties had sufficient knowledge of the other's case. It also helps in checking the delays in filing the applications. Once, the trial commences on the known pleas, it will be very difficult for any side to

reconcile. In spite of the same, an exception is made in the newly inserted proviso where it is shown that in spite of due diligence, he could not raise a plea, it is for the court to consider the same. Therefore, it is not a complete bar nor shuts out enter- taining of any later application. As stated earlier, the reason for adding proviso is to curtail delay and expedite hearing of cases.”

15.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.

16.Now, we come to the one of the main reason given by the trial court in rejecting the application that the claim was barred by

limitation. The Nizamuddin property, which property was sought to be added in the suit for partition was a property, which was sold by respondent No.1 in the year 2000, in which the plaintiff was also one of the witnesses. The trial court took the view that the suit was simplicitor for recovery of money for which limitation is only three years from the date of sale and not twelve years as claimed by the applicant. With regard to the limitation, the plaintiff-appellant relies on Article 110 of the Limitation Act, which is to the following effect:-

Article No.	Description of Suit	Period of Limitation	Time from which period begins to run
110	By a person excluded from a joint family property to enforce a right to share therein.	Twelve Years	When the exclusion becomes known to the plaintiff

17. Present is not a case of simply recovery of money. Plaintiff's claim is to enforce a right to share in the Nizamuddin property, which was sold in the year 2000 and according to plaintiff, the limitation is twelve years as per Article 110. The High Court has also noted the order of Additional District Judge holding that claim is barred by time. The High Court refrained from expressing any final opinion on the question of limitation but observed that the view taken by the Additional District Judge is correct. It is relevant to refer to Para 28 of the judgment, which is to the following effect:-

“The learned Additional District Judge in the impugned order has also accepted the contention of the counsel for the respondents/defendants of the relief sought to be added by way of amendment being barred by time and Articles 106 and 110 of the Schedule to the Limitation Act being not applicable. The counsel for the petitioner/plaintiff has been unable to show any precedent that a claim for a definite share in the sale proceeds of, a property would be governed by Articles 106 and Article 110 supra. However, the

same being in the nature of entering into the merits of the amendment, I refrain from dealing with the said aspect, though the view taken by the learned Additional District Judge appears to be reasonable and plausible.”

18.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.

19.While considering the prayer of amendment of the pleadings by a party, this Court in the case of Mahila Ramkali Devi & Ors. Vs. Nandram (Dead) through Legal Representatives & Ors., (2015) 13 SCC 132 has again reiterated the basic principles, which are to be kept in mind while considering such applications in Paragrpahs 20, 21 and 22, which is quoted as below:-

“20. It is well settled that rules of procedure are intended to be a handmaid to the administration of justice. A party cannot be re-fused just relief merely because of some mis- take, negligence, inadvertence or even infrac- tion of rules of procedure. The court always gives relief to amend the pleading of the party, unless it is satisfied that the party applying was acting mala fide or that by his blunder he had caused injury to his opponent which cannot be compensated for by an order of cost.

21. In our view, since the appellant sought amendment in Para 3 of the original plaint, the High Court ought not to have rejected the application.

22. In *Jai Jai Ram Manohar Lal v. National Building Material Supply*³, this Court held that the power to grant amendment to pleadings is intended to serve the needs of justice and is not governed by any such narrow or technical limitations.”

20. 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.

21. Taking into overall consideration of the facts of the present case and specially the fact that evidence by the parties was led after the filing of the amendment application, we are of the view that justice could have been served in allowing the amendment application. We thus allow the appeal and set aside the order of the High Court as well as the order of the Additional District Judge. The amendment application I.A. No. 1001 of 2011 stand allowed. Both the parties have led their evidences and case has already been fixed for hearing, however, to avoid any prejudice to the parties, justice will be served in giving a limited opportunity to the parties to lead additional evidence, if they so desire.

22. We thus direct that the parties may file this order before the trial court within two weeks from today, on receipt of the order, the trial court shall consider on framing of additional issue, if necessary and shall thereafter grant opportunity to the parties to lead additional evidence, if any. The entire exercise shall be completed within three months and thereafter suit be decided

finally. The parties shall bear their own costs. We make it clear that we have not expressed any opinion on merits of the case including on the question of applicability of Article 110 of the Limitation Act and all the issues shall be decided on the basis of materials on record without being influenced by any observation made by us"

12. The Hon'ble Supreme Court of India held that the Court always gives leave to amend the pleadings even if a party is negligent or careless as the power to grant amendment of the pleadings is intended to serve the ends of justice and is not governed by any such narrow or technical limitations. The learned counsel appearing for the petitioner also relied upon the judgment reported in **(2009) 15 SCC 528** in the case of ***Olympic Industries Vs. Mulla Hussainay Bhai Mulla Akberally and ors***, in respect of filing the reply statement as follows:-

"10. So far as this ground is concerned, we do not find that delay is a ground for which the additional counter statement could not be allowed, as it is well settled that mere delay is not sufficient to refuse to allow amendment of pleadings or

filing of additional counter statement. At the same time, delay is no ground for dismissal of an application under Order 8 Rule 9 of the Code of Civil Procedure where no prejudice was caused to the party opposing such amendment or acceptance of additional counter statement which could easily be compensated by cost. That apart, the delay in filing the additional counter statement has been properly explained by the appellant.

.....

15. *It is also well settled that the courts should be more generous in allowing the amendment of the counter statement of the defendant than in the case of plaint. The High Court in its impugned order has also observed that in order to file an additional counter statement, it would be open to the defendant to take inconsistent plea. The prayer for acceptance of the additional counter statement was rejected by the High Court on the ground that while allowing such additional counter statement to be accepted, it has to be seen whether it was expedient with reference to the circumstances of the case to permit such a plea being put forward*

at that stage.

16. As noted herein earlier, the only ground on which the High Court had rejected the acceptance of the additional counter statement was (i) by filing of such additional counter statement, the appellant was introducing a new case and (2) the entire trial was to be reopened causing great prejudice to the respondents whose examination was completed. It was also observed by the High Court that the appellant cannot be able to take such inconsistent plea by filing additional counter statement after cross-examination of the appellant. In our view, the High Court was in error in interfering with the concurrent orders of the Rent Control Tribunal, as from the fact stated we find that no prejudice was caused to the respondents and even if some prejudice was caused that could be compensated by cost.

17. As noted herein earlier, the appellant had already stated in his application for acceptance of additional counter statement the reasons for taking such new plea, viz., he could trace out the lease deed pertaining to the lease

only when he was cleaning the boxes. The respondents have also not disputed as to the existence of the lease deed only they are disputing the filing of the additional counter statement at such a belated stage. This being the position, we are of the view that even if the examination of PW-1 or his cross-examination was over, then also, it was open to the court to accept the additional counter statement filed by the appellant by awarding some cost against the appellant.

18. It is also well settled that while allowing additional counter statement or refusing to accept the same, the court should only see that if such additional counter statement is not accepted, the real controversy between the parties could not be decided. As noted herein earlier, by filing an additional counter statement in the present case, in our view, would not cause injustice or prejudice to the respondents but that would help the court to decide the real controversy between the parties. In our view, the High Court was, therefore, not justified in rejecting the application for permission to file additional counter statement as no prejudice could

be caused to the respondent which would otherwise be compensated in terms of cost."

The Hon'ble Supreme Court of India held that the Courts should be more generous in allowing the amendment of the counter statement than in the case of plaint. The Court should only see that if such additional counter statement is not accepted, the real controversy between the parties could not be decided.

13. However, the learned counsel appearing for the respondent relied upon the following judgments :-

(i) **AIR 1957 SC 363** in the case of **Prigonda Hongonda Patil Vs. Kalgonda Shidgonda Patil & ors**, as follows:-

"Civil P.C.(5 of 1908) O.6 R.17 - Amendment when can be allowed - Amendment taking away right accrued to the party by lapse of time.

..... All amendments ought to be allowed which satisfy the two conditions (a) of not working injustice to the other side, and (b) of being necessary for the

purpose of determining the real questions in controversy between the parties....."

(ii) The judgment reported in ***AIR 1967 SC 96*** in the case of ***A.K.Gupta and Sons Ltd., Vs. Damodar Valley Corporation***, in which the Hon'ble Supreme Court of India held as follows :-

"Civil P.C. (5 of 1908), O.6 R.17, S.153 - Amendment of pleadings introducing new case cannot be allowed if suit on such case is barred.

.....

In the matter of allowing amendment of pleading the general rule is that a party is not allowed by amendment to set up a new case or a new cause of action particularly when a suit on the new cause of action is barred....."

(iii) In the judgment reported in ***AIR 2007 SC 1478*** in the case of ***Shiv Gopal Sah @ Shiv Gopal Sahu Vs. Sita Ram Saraugi and ors.***, it is held as follows:-

"Civil P.C. (5 of 1908) O.6 R.17 - Amendment of plaint - Suit for eviction -

Defendant set up rival title on the basis of sale deed - plaintiff and co-plaintiffs, who purchased property from plaintiff remained silent and negligent in getting declared said sale deed being bogus for more than 15 years - Amendment of plaint sought thereafter - No explanation for delay mentioned - Plaintiffs not entitled to introduce all time - barred claim in facts and circumstances."

(iv) In the judgment reported in **2011 (2) CTC 28** in the case of **N.Lalitha and ors Vs. Manujothi Ashramam rep by its President and ors.,** it is held as follows :-

"Code of Civil Procedure, 1908 (5 of 1908), Order 6 Rule 17 - Limitation Act, 1963, (36 of 1963), Article 58 - Amendment of pleadings - Amendment Application filed to overcome objection with regard to limitation - Suit originally filed for declaration, declaring certain documents would not confer any right on defendant - Amendment application filed for declaration of title - Relief of declaration should be prayed within three years from the date on which right to sue first accrued - Relief sought to

*be introduced by plaintiff is barred by limitation -
Amendment cannot be allowed."*

(v) In the judgment reported in **AIR 2013 SC 3188** in the case of **Mashyak Grihnirman Sahakari Sanstha Maryadit Vs. Usman Habib Dhuka and ors.**, it is held as follows :-

"Amendment sought for by the plaintiff to incorporate relief of declaration of conveyance deed as illegal- Was not only a belated one but was clearly an after thought for obvious purpose to avert inevitable consequences - order of High Court allowing amendment petition is erroneous and not sustainable"

(vi) In another judgment reported in **2017 (2) CTC 309** in the case of **M.Panneerselvam Vs. Susseela and ors.**, it is held as follows :-

"Limitation Act 1963 (36 of 1963) Article 59 - Suit to cancel or set aside instrument - Computation of limitation - Plaintiffs, who are eonomine parties to sale transaction, filed suit for declaration to declare deed as null and void - Sale

Deed executed in year 1987 - plaintiff in pre-suit notice admitted his knowledge about execution of Deed - Suit instituted in the year 1992 - Suit seeking cancellation of instrument ought to have been instituted within three years from date of knowledge - Suit haplessly barred by limitation."

(vii) In another judgment reported in **AIR 2019 SC 72** in the case of **Jamila Begum (D) Thr. LRs. Vs. Shami Mohd. (D) Thr. LRs and anr**, it is held as follows :-

"Suit for declaration - Period of Limitation - Plaintiff neither challenging sale deed executed in favour of defendant nor claiming his right over suit property for eight years in spite of number of proceedings taking place between parties - Suit barred by limitation"

(viii) In yet another judgment reported in **2016 (1) LW 998** in the case of **L.C.Hanumathappa (dead) rep. by his LRs Vs. H.B.Shivakumar**, the Hon'ble Supreme Court of India 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 limitation	Time from which period beings to run
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Part III- Suits Relating To Declarations

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

<i>Description of suit</i>	<i>Period of limitation</i>	<i>Time from which period beings to run</i>
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*120. Suit
for which
no period of
limitation is
provided
elsewhere in
this Schedule*

Six years

*When the right to
sue accrues*

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 [AIR 1960 SC 335 : (1960) 2 SCR 253] , AIR p. 349, para 33) “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.” [at paras 25 – 30]

14. Given this statement of the law, it is clear that the present amendment of the plaint is indeed time-barred in that the right to sue for declaration of title first arose on 16th May, 1990 when in the very first written statement the defendant had pleaded, in para 13 in particular, that the suit for injunction simpliciter is not maintainable in that the plaintiff had failed to

establish title with possession over the suit property. The only question that remains to be answered is in relation to the doctrine of relation back insofar as it applies to amendments made under Order VI Rule 17 of the Code of Civil Procedure."

14. The Hon'ble Supreme Court of India and this Court held that the Court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application. Further allowing the amendment would not only have effect of plaintiff getting rid of admission made in the original plaintiff but defeating provision of Order 12 Rule 6 of C.P.C., such amendment changing the entire character of plaint cannot be permitted, that too after the lapse of reasonable years after institution of the suit.

15. In the case on hand, the petitioner filed suit for declaration declaring title in his favour in respect of the half share of the suit property. The petitioner stated in his plaint that the respondent has no right over the

suit property and no way connected with the title, possession and enjoyment of the suit property. He further stated that the respondent had created forged and fabricated document with regard to the suit property and the petitioner has not entered any agreement for sale of the the suit property till date. Whereas the respondent filed his written statement and specifically stated that the petitioner executed sale deed in respect of the suit property in favour of the respondent herein by the registered sale deed dated 11.04.2002. Further stated that without setting aside the registered sale deed dated 11.04.2002, the petitioner is not entitled to file this suit for declaration in respect of his half share in the suit property, since the petitioner is well aware of the sale deed dated 11.04.2002.

16. Therefore, the petitioner had knowledge about the sale deed dated 11.04.2002, even at the time of filing the suit viz., 15.02.2012. Further it is also brought to his knowledge by the respondent herein in his written statement dated 25.06.2012. The sale deed is of the year 2002 and it is duly registered one. Though the petitioner stated that the respondent created forged and fabricated document in his favour in respect of the suit property,

the petitioner did not choose to challenge the said sale deed dated 11.04.2002. Even after filing the written statement, the petitioner failed to amend the prayer to include the prayer of declaration in respect of the sale deed dated 11.04.2002.

17. That apart, the petitioner has also failed to file his reply statement for the counter claim made by the respondent herein immediately after filing the written statement dated 25.06.2012. Only on 09.06.2015, the petitioner has chosen to file this petition seeking permission to receive his reply statement for the counter statement and also filed petition to include the prayer of declaration to declare the sale deed dated 11.04.2002 as null and void. Therefore, the amendments sought for by the petitioner is clearly barred by limitation. The above judgments relied upon by the learned counsel appearing for the respondent are squarely applicable to the case on hand.

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18. Article 58 of the Limitation Act is bearing on decision of this case which reads as follows :-

Description of suit	Period of limitation	Time from which period beings to run
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Part III- Suits Relating To Declarations

58. To obtain any other declaration	Three Years	When the right to sue first accrues
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Accordingly, the present petition for amendment of the plaint is time barred. The right to sue for declaration of title first arose even on the date of plaint viz., 15.02.2012. Thereafter, the respondent filed written statement on 25.06.2012 and specifically pleaded that the petitioner executed sale deed in respect of his half share by the registered sale deed dated 11.04.2002 and sought for recovery of possession. Even then the petitioner failed to challenge the sale deed dated 11.04.2002 and also failed to file reply statement in time. Therefore the amendment sought for by the petitioner is squarely bared by limitation and it cannot be permitted.

19. It is also clear that the amendment sought for by the petitioner reflects his after thought and the petitioner ought to have asked for at the time of filing the suit itself, when the petitioner categorically stated that the

respondent forged the documents in his favour in respect of the suit property. The judgments relied upon by the learned counsel appearing for the petitioner are not helpful to the case of the petitioner. Therefore, the Court below rightly dismissed the petitions for amendment and to receive the reply statement and this Court finds no illegality or infirmity in the orders passed by the Court below.

20. In view of the above discussions, both the Civil Revision Petitions are dismissed. There shall be no order as to costs. Consequently connected miscellaneous petition is closed.

15.03.2021

Internet : Yes

Index : Yes/No

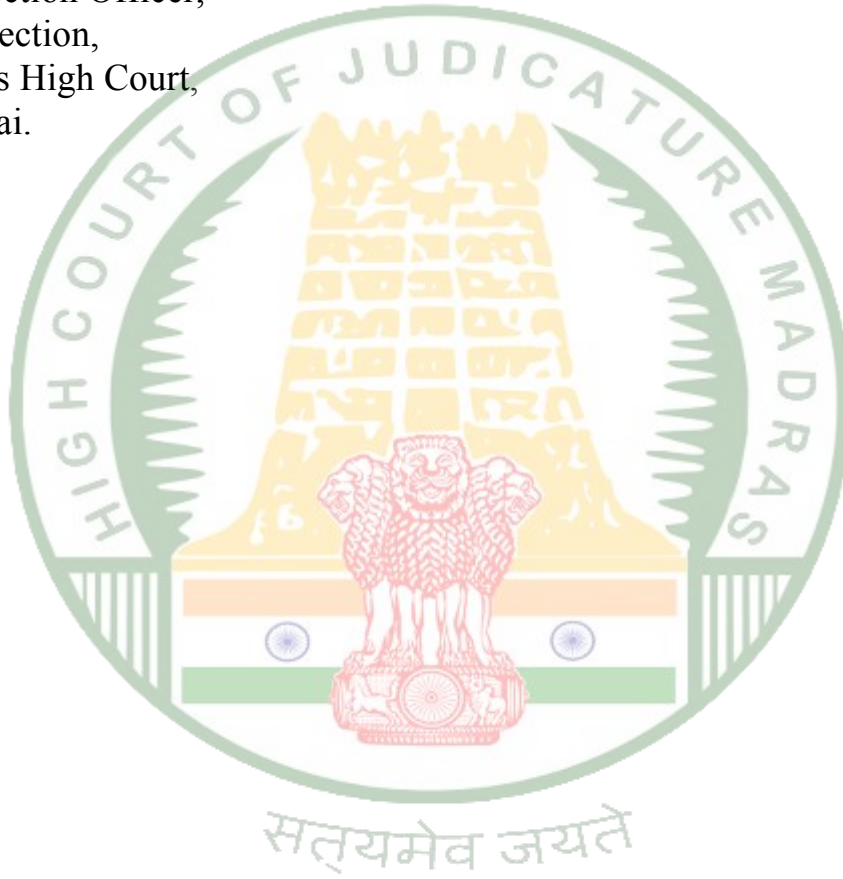
Speaking order/Non-speaking order

rts

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To

1. The District Munsif,
Sankari.
2. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.



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C.R.P.(PD)Nos.2879 & 2880 of 2016

G.K.ILANTHIRAIYAN, J.

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C.R.P.(PD)Nos. 2879 & 2880 of 2016
and C.M.P.No.14584 of 2016

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