



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.04.2022

Coram

The Hon'ble Mr. Justice **C.V.KARTHIKEYAN**

C.R.P.(PD) No.2527 of 2018

and

C.M.P.No.15373 of 2018

1.K.R.Mani

... Petitioner / Petitioner / Plaintiff

Vs.

1.Sengodan

2.Madhu

3.Ramasamy

4.Ramayee

... Respondents / Respondents / Defendants

Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the Fair and Decretal order in I.A.No.839 of 2017 in O.S.No.176 of 2011 dated 12.02.2018 passed by the District Munsif Court, Mettur.

For Petitioner .. Mr.R.Subramaniam

For R1 & R2 .. Mr.V.Sekar

R3 .. Died

R4 .. Not Ready in notice

**ORDER**

WEB COPY This Civil Revision Petition had been originally dismissed by order dated 24.06.2021 and subsequently, the revision petitioner had filed CMP.No.14455 of 2021 to restore the Civil Revision Petition.

2.It must be kept in mind that when it was dismissed, the learned counsel for the revision petitioner was not present. Subsequently, another counsel had entered appearance on change of vakalat and had filed CMP No.14455 of 2021 to restore the Civil Revision Petition. Orders had been passed restoring the Civil Revision Petition in CMP No.14455 of 2021, simultaneously along with this order.

3.Heard arguments advanced by Mr.R.Subramaniam, learned counsel for the revision petitioner and by Mr.V.Sekar, learned counsel for the respondents.

4.This Civil Revision Petition has been filed questioning an order in I.A.No.839 of 2017 in O.S.No.176 of 2011, which suit is now pending on the file of the District Munsif Court, Mettur. The said I.A.No.839 of 2017 had been filed taking advantage of Order 6 Rule 17 CPC seeking to



amend the plaint by introducing a new relief of declaration of title and also to amend the schedule of properties already listed in the plaint by correcting the schedule of one of the property and by adding another property as a further subject matter of the suit. The said Interlocutory Application came up for consideration before the learned District Munsif Mettur, who, by an order dated 12.02.2018 had dismissed the said application. That gave necessity to file the present Civil Revision Petition.

5.It is also to be mentioned that the trial in O.S.No.176 of 2011 had progressed, even when this Civil Revision Petition has been pending and I am informed that the suit is now posted for delivering of judgment on 23.04.2022 / tomorrow.

6.A few brief facts are required to be narrated before examining the necessity which prompted the plaintiff to file I.A.No.839 of 2017. Originally the defendants in the suit in O.S.No.176 of 2011, Sengoda Gounder, Ramasamy and Madhu, son of Sengoda Gounder had filed O.S.No.49 of 2010. That suit is now pending before the Sub Court at Mettur. That suit had been filed seeking declaration of title and



permanent injunction. The properties involved in that particular suit were S.Nos.277/5, 277/6, 274/2. It must be mentioned that these lands are situated at Chitrapatti Pudur, Alamarathupatty Village in Mettur Taluk.

7.The said suit had been filed against eight defendants, among whom K.R.Mani, the revision petitioner in CRP No.2527 of 2018 had been shown as 2nd defendant. It had been contended that the 6th defendant claimed to have purchased a portion of the suit properties from the 3rd to 5th defendants. It was stated that the 6th defendant was the son of the 7th defendant. The defendants are related and members of the same family. The plaintiffs claimed, however, that they are the absolute and true owners of the property in S.Nos.277/5 and 277/6. They claimed that the properties had devolved to them through their mother Athayammal. It had been stated that Athayammal had obtained the properties by way of a registered settlement deed dated 07.03.1955. Further properties had been purchased by the 1st plaintiff Sengoda Gounder by way of a registered sale deed dated 05.04.1973. It had been stated that all these properties had fallen into the common joint family pool.

8.Thereafter, the Revenue Department had changed the survey numbers and the survey numbers involved are S.Nos.277/6 and 274/2



and also 277/5 in Alamarathupatty Village, Mettur Taluk. The plaintiffs claimed that they are in possession of the suit properties. They also claimed as a cause of action, that on 25.01.2010, the 2nd and the 8th defendants, had attempted to trespass into the suit properties and this necessitated instituting the suit in O.S.No.49 of 2010 for declaration of title and for permanent injunction to protect possession.

9. Written statements had been independently filed by the 2nd, 3rd, and 8th defendants.

10. In the written statement of the 2nd defendant, the averments in the plaint were denied and it had been stated that the suit properties originally belonged to one Nachappa Gounder s/o. Sellappa Gounder and Nachappa Gounder s/o. Ramasamy Gounder by virtue of a sale deed dated 20.03.1946. It was stated that subsequently there was an oral partition and the properties were mutually allotted to the two of them. It had been stated that Nachappa Gounder s/o. Sellappa Gounder did not marry and that he left his property to his three sisters. One of the sister and her family members had sold the property to one Palanisamy and thereafter, he had sold the property to one Devarajan who executed a



settlement deed in favour of his mother and she executed a settlement in favour of her daughter Rajathimani.

11.The other Nachappa Gounder s/o. Ramasamy Gounder had two sons. The two sons orally partitioned the properties. One of the son had also sold his share to the aforementioned Rajathimani. It had been stated that the 2nd defendant had left the family and relinquished the properties to his father Ramasamy Gounder and to his brother Madesan. The 2nd defendant's bother Madesan then sold his share to the 2nd defendant. The defendants also claimed title and they also disputed the fact that the plaintiffs were in possession. They therefore stated that the suit should be dismissed.

12.The dates are quite relevant. The plaint had been verified on 24.02.2010. The 2nd defendant had verified his written stated on 27.07.2011. The 3rd defendant had filed written statement, which had been adopted by the 4th and 5th defendants. In effect the same facts were stated questioning the title of the plaintiffs and also the claim of the plaintiffs that they were in possession of the properties and it was therefore stated that the suit should be dismissed.



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13.A copy of the written statement filed by the 3rd defendant which had been adopted by the 4th and 5th defendants had been served on the counsel for the plaintiffs on 05.09.2011. It can be reasonably presumed that it should have been filed around the month of September 2011.

14.A written statement had also been filed by the 8th defendant, which had also been adopted by the 6th and 7th defendants, wherein, the averments in the plaint had been denied and disputed. It was stated that the plaintiffs have no cause of action and it was stated that the documents of title of the properties were in the possession of the defendants. It was also claimed that the defendants never attempted to trespass into the properties. It was stated that the suit should be dismissed. This written statement was verified on 31.03.2011.

15.In effect, the pleadings had been completed by the filing of the plaint and the written statements by September 2011. The defendants had filed their written statement to the plaint in O.S.No.49 of 2010 in which the plaintiffs had claimed title and had averred that they are in



possession. The defendants had disputed both those assertions and had also claimed title over the property.

16.The parties were invited to adduce evidence. I am informed that the trial is in progress.

17.Thereafter, the suit in O.S.No.176 of 2011 had been filed by the 2nd defendant in O.S.No.49 of 2010 seeking just injunction namely, to protect possession over a portion of the very same property, which was the subject matter of the suit in O.S.No.49 of 2010. There is one property in common namely, land in S.No.277/6. The other properties differ. It must be mentioned that they are all vacant lands. The suit in O.S.No.176 of 2011 was filed only for bare injunction. There was no assertion of title. There was no claim for title. Injunction was sought on the ground of title. This suit proceeded before the District Munsif Court, Mettur.

18.I am informed by both the learned counsels that the plaintiff in O.S.No.176 of 2011 had filed a memo seeking joint trial of both the suits. That memo or application had been consciously withdrawn, which effectively indicates that the plaintiff in O.S.No.176 of 2011 was at peace with his suit being tried independently of the suit in O.S.No.49 of 2010.



19.In O.S.No.49 of 2010, an application was filed seeking appointment of an Advocate Commissioner and an Advocate Commissioner had actually been appointed and had also filed his report. Thereafter, the defendants therein filed an application to scrap that particular report and to appoint a fresh Advocate Commissioner. That application was ordered in favour of the applicants / defendants, in that particular suit in O.S.No.49 of 2010, necessitating filing of CRP (NPD) 2327 of 2018, which was dismissed by my learned predecessor on 24.06.2021 and CMP No.14457 of 2021 filed to restore had been dismissed by me by an order passed simultaneously today.

20.It was observed by my learned predecessor that the revision petitioner had filed objections to the Advocate Commissioner report and that would suffice and the report need not be scrapped.

21.Be that as it may, in O.S.No.176 of 2011, the plaintiffs then filed I.A.No.839 of 2017. The relevancy of mentioning the dates, earlier in the order now assumes significance.

22.The suit in O.S.No.49 of 2010 had been filed in the year 2010. The written statements had been filed by September 2011. The trial had



commenced. The plaintiffs and the defendants grazed the witness box.

They were content with the suit being tried on the basis of the pleadings already filed.

23.The suit in O.S.No.176 of 2011 independently progressed before the District Munsif Court, Mettur. Again the plaintiff and the defendants were contended in adducing evidence. They grazed the witness box. They adduced oral evidence. They produced documents to substantiate their respective claims. After the evidence had been recorded in entirety, the suit is now posted for delivering of judgment on 23.04.2022.

24.The plaintiff had filed I.A.No.839 of 2017 under Order 6 Rule 17 CPC seeking to amend the relief sought by including the relief of declaration of title and also to include a further property in the suit schedule.

25.The learned District Munsif, Mettur, probably quite frustrated with this particular application filed at the end of the trial process, had dismissed the application. Such dismissal had given rise to the filing of the present Revision Petition.



26.Mr.R.Subramaniam, learned counsel for the revision petitioner pointed out the impracticality of such an order by stating that both the suits revolve over the same properties and stated that when the plaintiff in O.S.No.176 of 2011 had sought to protect possession on the basis of title, and when there is a parallel suit pending seeking declaration of title and injunction, it would only be appropriate that both suits are tried together, to prevent inconsistency in the reasoning and in appreciation of evidence and in the decision rendered and therefore asserted that the District Munsif, Mettur, should have permitted the amendments sought to be carried out.

27.In the order, among other reasons, the learned District Munsif had observed that if the amendments are permitted, by inclusion of a further property, the value of the suit claim would increase and that would oust the pecuniary jurisdiction of the District Munsif Court and the suit would have to be transferred to the Court of competent jurisdiction.

28.Mr.R.Subramaniam, learned counsel assailed that particular reason and stated that the Court should not hold on to a suit. Even if the value is to be increased, the proper procedure would be to permit the



amendment for declaration of title and inclusion of a further property and if it is found that by such amendment, the pecuniary value of the District Munsif Court is ousted, then the District Munsif Court, should have transferred the suit to the Sub Court or to the Court of competent jurisdiction and return the plaint to be presented in the Court of competent jurisdiction. Dismissing the application, according to Mr.R.Subramaniam, was not the proper method envisaged in law.

29.The other aspect which necessitated the dismissal of the application as reasoned by the learned District Munsif, was the issue of limitation. The learned District Munsif found that the relief of declaration was barred by limitation. It was stated that the earlier suit was instituted in the year 2010, where there was a positive assertion by the defendants in O.S.No.176 of 2011 that they were the title holders of the properties and claimed the title to their benefit and it was therefore stated in the order that if at all, the plaintiff in O.S.No.176 of 2011 had any grievance then, he should have sought such declaration within the period of limitation of three years and that filing of such an application in the year 2017 after a period of five years would be barred by the law of limitation.



WEB COPY 30. The learned District Munsif had also examined the issue whether there was shifting of the cause of action and stated that the suit had been filed for injunction and later, when the declaration relief was sought, the cause of action had shifted and had therefore dismissed the application, on that ground also.

31. All these grounds have been assailed by Mr. R. Subramaniam, learned counsel for the revision petitioner in the course of his arguments.

32. Mr. V. Sekar, learned counsel for the respondents / defendants in O.S.No.176 of 2011, however, justified the order of the learned District Munsif. The learned counsel admitted that with respect to the value of the suit, if the inclusion of further properties are permitted, then naturally the valuation of the suit would increase and then there must be an undertaking given by the plaintiff to pay the additional Court fees. The learned counsel, did not concede to the fact that the relief of declaration should be examined in the perspective as stated by Mr. R. Subramaniam.



33.It is the contention of Mr.V.Sekar, that the relief of declaration is barred by law of limitation. He further stated that the plaintiff in O.S.No.176 of 2011 was aware of the fact that the defendants had asserted the title way back in the year 2010 and therefore filing an application in the year 2017 was clearly barred by the law of limitation. The learned counsel therefore stated that the learned District Munsif was right in dismissing the said application.

34.Both the learned counsels relied on a string of judgments. Let me examine the precedence given a little later.

35.The facts in this case are simple. The facts are straight forward. There was a suit in O.S.No.49 of 2010, seeking declaration of title and injunction. The defendants therein disputed and denied title and possession of the plaintiffs. The issues were put up for trial. The parties grazed the witness box. The matter is part heard.

36.Pending that suit, the 2nd defendant therein filed O.S.No.176 of 2011. Even though in the body of the plaint, the plaintiff claimed title, the relief of injunction alone was sought. Again the issue was put up for



trial. The parties adduced evidence and the suit had progressed substantially and the learned District Munsif, Mettur, has now posted the suit for judgment on 23.04.2022.

37.The issue now is whether the plaintiff in O.S.No.176 of 2011 can be permitted to amend the plaint at this stage, when the suit is posted for judgment to include the relief of declaration and also to include a further property to be the subject matter of discussion and evidence and also whether the clock can be set back and the suit can be pulled away from the stage of pronouncing judgment to be tried along with O.S.No.49 of 2010 and joint trial be conducted.

38.Viewed from any angle, it is necessary to state, even before examining the precedents on this aspect, that any judgment or order should give clarity to the parties, whether they be plaintiff or defendant. If they seek declaration of title they must know whether the declaration of title is granted or not and if they seek injunction, whether injunction is granted or not granted.



39.It would only be appropriate that all these issues are heard and decided by one Court. Consistency in analyzing evidence can be achieved only when documents which are relied in two separate litigations are examined by one authority. Inconsistency in the nature of the judgment pronounced or in the nature of reasons, should not be permitted and as a matter of fact, the entire judicial system would come under a deep scanner, if it is so permitted.

40.The issue in this case now revolves around the delay in filing or seeking an application to declare title by the plaintiff in O.S.No.176 of 2010. It has to be examined whether when he filed his written statement in the year 2011 and had asserted title such assertion was only a moonshine defence or a plea with authority. An onus is cast on the Sub Judge who is trying O.S.No.49 of 2010 to first examine the issue of title and whether declaration of title can be granted to the plaintiffs therein. Even if that declaration of title relief is to be negatived, it would not put either the defendants or the plaintiffs in any better situation, because, the learned Sub Judge, can never declare title to another contesting party namely, the defendants. Neither the plaintiffs will know whether they are the title holders, nor would the defendants will know whether they are



the title holders. That issue will once again have to be adjudicated in an appellate forum and this would protract and prolong the litigation already pending for the past one decade.

41. On the issue of limitation seeking relief of title, the Court will necessarily have to examine whether the body of the plaint moves along with the issue of possession simpliciter or possession on the basis of title.

42. In the plaint in O.S.No.176 of 2011, possession is claimed on the basis of the title to the properties. If possession is claimed on the basis of title to the properties, seeking a declaration of such title or rather reiteration of that title by the Court would only be a natural step taken forward by the plaintiff therein. That would only be to the advantage of both parties.

43. If there are two rival claims for the same land, it would normally only be appropriate that they are adjudicated by one forum on the basis of analysis of one set of common documents.



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44.A Full Bench of this Court had an occasion to examine such an issue. I would rest by referring to the pronouncement of the Full Bench.

That was reported in *(2006) 5 CTC 609, Hi. Sheet Industries V. Litelon Limited and others*. In that case, the issues to be considered when an amendment is sought had been crystallized into examining whether such amendment would affect the cause of action, whether it would amount to introducing a new cause of action and whether such amendment is required in the interest of justice. The Full Bench had moved over to balancing the rights between the two parties.

45.It had been stated that if such amendment does not introduce a new cause of action and if it does not affect the existing cause of action and if it is required in the interest of justice, then the plea that it is barred by limitation would not be a ground for rejecting the amendment. That was an issue with respect to Section 40 of the Specific Relief Act. Section 40 of the said Act, relates to a claim of damages in lieu of injunction. A further prayer for damages had been sought and it was claimed that the relief sought by way of amendment was barred. The Full Bench was called upon to answer this particular issue and examine whether the amendment can be granted or not. A slight modification in



the present case is grant of relief of declaration when already the plaintiffs claimed possession on the basis of title. The Full Bench had laid down the principles as follows:-

“12.00.Result:

In the result, the reference is answered holding:

(1) that the delay in filing the Application for amendment of the pleadings is not fatal when no serious prejudice is shown to have caused to the opposite party so as to take away any accrued right and the Court should take notice of the subsequent events in order to shorten the litigation to preserve and safeguard the rights of both the parties and to subserve the ends of justice and while doing so, the Court was not justified in allowing or disallowing the amendments so as to defeat the valuable rights of the parties and amendments of pleadings should be allowed which are necessary for determination of the real controversy in the suit and while doing so, the Court should not go into the correctness or falsity of the main case and it should not record the finding on the merits of the amendment as it should be done only during the trial of



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the Suit.

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(3) The Proviso to Order 6, Rule 17 of Act 22 of 2002 is applicable to the pleadings instituted with effect from 1.7.2002 and not to the pleadings instituted prior to 1.7.2002 and while considering the proviso to Order 6, Rule 17, the Court has to examine in detail and commencement of trial must be understood as final hearing of the Suit i.e., examination of witnesses, filing of documents, addressing of arguments, etc. and the Court should not forget its unfettered discretion to allow the amendment after applying itself the judicial discretion, if there is no negligence on the part of the party.

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46.It had been further stated by the Full Bench that the Court has to examine the issue in detail and that commencement of trial must be understood as final hearing of the suit i.e., examination of witnesses, filing of documents, addressing of arguments, etc., and the Court should not forget its unfettered discretion to allow the amendment after applying



to itself the judicial discretion, if there is no negligence on the part of the party.

47.It must be kept in mind that the Full Bench had placed a caveat, very obvious to the fact of the amendment to the Code of Civil Procedure in the year 2002.

48.Mr.V.Sekar, learned counsel for the respondents, relied a judgment of the Hon'ble Supreme Court referred in **(2020) 7 SCC 366, Dahiben v. Arvindbhai Kalyaniji Bhanusali (Gajra) Dead and others**, which again related to limitation. Learned counsel relied on paragraphs 24.4, 25 and 26. The issue related to the period of limitation as prescribed under Articles 58 and 59 of the Schedule to the 1963 Act. Article 58 relates to three years of limitation when the right to sue first accrued. The learned counsel relied on this particular aspect and stated that that right to seek declaration of title had first accrued when the plaint in O.S.No.49 of 2010 itself had been instituted and nothing prevented the defendants therein from seeking a counter claim with respect to declaration of title.



49. Balancing the ratios laid down, the following principles

emanate:-

i). Amendment can be granted, if it does not shift the cause of action.

ii). Amendment can be granted, if it does not introduce new cause of action.

iii). Amendment can be granted, if it is shift in the interest of justice.

iv). The Court must be vary of the limitation to granting amendment by Act 22 of 2002, to Order 6 Rule 17 CPC.

50. The Full Bench had left the issue of limitation open and had stated that if the aforementioned first three aspects are satisfied, then the plea of limitation need not be strictly adhered to by the Court. This Full Bench Judgment has to be balanced with the reasoning of the Hon'ble Supreme Court reported in **(2020) 7 SCC 366, Dahiben** referred supra, wherein, it had been held that the Court must be vigilant against any camouflage or suppression, and determine whether the litigation is utterly vexatious, and an abuse of the process of the Court. It had also been stated that the Limitation Act, 1963 prescribes a time limit for the



institution of all suits and it had been stated that every suit instituted after the prescribed period, shall be dismissed even though limitation may not have been set up as a defence. If a suit is not covered by any specific article, then it would fall within the residuary article.

51. When examining the issues raised from this angle, the issue of limitation assumes significance. Section 2(j) of the Limitation Act, is very clear.

52. In this case, it has to be examined primarily, whether the relief of declaration sought by the plaintiff in O.S.No.176 of 2011 in the year 2017 is barred by the law of limitation. Article 58 of the Limitation Act, states that any declaration is to be sought within a period of three years from the date, when the cause of action first accrued. The crucial words in that particular article are the words '*first – accrued*'.

53. It is to be examined, whether in the instant case, the relief of declaration had accrued within a period of three years prior to the year 2017 or much earlier to that period. The answer is that it had accrued much earlier to the three years period prior to the year 2017.



54.In O.S.No.49 of 2010, by September 2011, the written statements had been filed. The defendants had stated that they were the owners of the property, that they had title to the property. Their cause to seek declaration had arisen the minute the plaint in O.S.No.49 of 2010 had been instituted. They should have sought the relief of declaration within a period of three years from that particular date of assertion of title by the plaintiffs.

55.It is also seen that in O.S.No.176 of 2011, the defendants had filed their written statements in the year 2011 denying the title of the plaintiff therein. Atleast then the defendants should have asserted their title by including the relief of declaration by way of a counter claim.

56.The law of limitation, certainly prevails over procedural necessities. The parties went to trial consciously in two separate suits. More particularly the plaintiff in O.S.No.176 of 2011 had consciously withdrawn an application / memo filed seeking joint trial. When they decide that they want an independent trial, then, later owing to change of counsel or owing to any other advise subsequently given, the clock cannot be turned back.



57.The reasons given by the learned District Munsif that if the relief of declaration of title or rather by inclusion of properties, the suit would ousted from the jurisdiction of the District Munsif Court, is not correct. But, the relief sought cannot be granted since it is barred by the law of limitation.

58.The aspect whether it would be appropriate that one judicial forum examines all documents and one common judgment is delivered is to be balanced with the fact that the plaintiff in O.S.No.176 of 2011 had permitted the trial to proceed further. I would therefore direct the District Munsif Court, Mettur to deliver the judgment on 23.04.2022.

59.Insofar as the other suit is concerned in O.S.No.49 of 2010, let I would permit both the plaintiffs and the defendants to adduce further evidence, if required. Let the parties independently question title or the factum of possession. The parties will have to workout their remedies and if at all it is found that there is inconsistency either in the reasoning or inconsistency in the judgments, the appellate forum is always available to set right that particular anomaly. But let the suits proceed in manner known to law. I would therefore not concede to the requests raised in the Civil Revision Petition.



60. With the above observations, the Civil Revision Petition is dismissed. No order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

22.04.2022

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To,
The District Munsif Court, Mettur.



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C.V.KARTHIKEYAN,J.

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