

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 20.04.2021

PRONOUNCED ON: .06.2021

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.R.P. (PD) No.3033 of 2019

And

C.M.P.No. 19474 of 2019

1. Muthusamy
2. Devaraj
3. Sathiya

... Revision Petitioners/Respondent Nos. 1, 4
& 5/Defendant Nos. 1, 4 & 5

-Vs-

1. Logananthan
2. Pavalayee
3. Baby @ Logeswari

... Respondent No.1/Petitioner/Plaintiff

... Respondent Nos. 2 & 3/Respondent Nos.
2 & 3/Defendant Nos. 2 & 3

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, 1908 against the fair and decreetal order dated 17.07.2019 made in I.A.No. 1376 of 2018 in O.S.No. 344 of 2015 on the file of Sub-Judge of Bhavani.

For Petitioners : Mr. R.Prabakar
For 1st Respondent : Mr. N.Manokaran
For RR 2 & 3 : Mr. K.Selvaraj

ORDER

This Civil Revision Petition has been filed by the 1st, 4th and 5th defendants in O.S. No. 344 of 2015, now pending on the file of the Sub Court, Bhavani, questioning the order dated 17.07.2019 allowing I.A. No. 1376 of 2018, which Interlocutory Application had been filed by the plaintiff under Order VI Rule 17 CPC, seeking amendment of the plaint.

2. O.S. No. 344 of 2015 had been filed by the plaintiff, Loganathan, seeking partition and separate of 1/6th share in the 2 items of suit schedule property and also to restrain the defendants from dealing with the said properties. The 1st defendant, Muthusamy, is the father of the plaintiff and the 3rd defendant, Baby @ Logeshwari. They were born to him through his 1st wife, Mallika. The 5th defendant, Sathiya, is the 2nd wife of the 1st defendant, Muthusamy and the 4th defendant, Devaraj, is their son.

3. The plaintiff has stated that he and his mother, Mallika are staying together. She had separated from the 1st defendant. Claiming that the 2 items of the suit property have an ancestral nucleus and complaining denial of rightful share, the suit had been filed seeking, as aforesaid partition and separate possession of 1/6th share. When the plaintiff demanded his share on 02.05.2015, the 1st defendant stated that he was the absolute owner of the properties. The plaintiff, thereafter on 01.06.2015, applied for certified copy of all documents registered with respect to the suit properties and came to know that grandfather had executed two settlement deeds on 07.11.2006 in favour of the 1st defendant with respect to the 1st and 2nd items of suit property. Later, the 1st defendant had executed a settlement deed dated 13.11.2014 in favour of the 5th defendant with respect to the 2nd item of suit property and another settlement deed dated 21.07.2015 in favour of the 4th defendant with respect to portion of the 1st item of suit property. The plaintiff, in the plaint, claimed that the three settlement deeds are nonest in law, and have no legal sanctity. The plaintiff had also filed certified copies of the settlement deeds executed by his

grandfather in favour of the 1st defendant and the settlement deed executed by the 1st defendant in favour of the 5th defendant.

4. Written statements were filed by the 2nd, 3rd and 4th defendants. The 4th defendant contested the claim of the plaintiff.

5. The plaintiff then filed I.A. No. 1376 of 2018 under Order VI Rule 17 of CPC to amend the plaint by including the reliefs of declaring that the 2 settlement deeds dated 07.11.2006 executed by his grandfather infavour of the 1st defendant and the settlement deeds dated 13.11.2014 and 24.07.2015 executed by the 1st defendant in favour of the 5th and 4th defendants respectively were null and void and not binding on the plaintiff. The plaintiff also sought amendment of the Resurvey number and extent of the 1st item of suit property and the valuation of the suit and the Court fees paid thereon. In the affidavit filed in support of the said application, the plaintiff stated that owing to inadvertence and oversight, he had not included the said reliefs and had wrongly described the 1st item of suit property while instituting the suit.

6. A counter was filed by the 4th defendant primarily pointing out that even in the plaint, the plaintiff had admitted that he came to know about the settlement deeds on 01.06.2015 when he applied for certified copies of the documents relating to the 2 items of suit property, and that therefore, the application was filed seeking to declare that the settlement deeds were null and void on 28.11.2018, and therefore seeking the said relief was barred by the law of Limitation.

7. This application came up for consideration before the learned Sub Judge, Bhavani, and by order dated 17.07.2019, the application was allowed. The learned Sub Judge observed that the suit was posted for cross examination of PW 1 and therefore no prejudice would be caused to the contesting defendants. It was further observed that the issue of limitation would be “decided after full fledged trial”. The learned Sub Judge allowed the petition on payment of costs of Rs.500/- to each of the defendants.

8. Questioning the rationale of the said order, the 1st, 4th and 5th defendants have filed this Revision Petition.

9. Heard arguments advanced by Mr. R. Prabakar, learned counsel for the revision petitioners/1st, 4th and 5th defendants and Mr. N. Manokaran, learned counsel for the 1st respondent/plaintiff and Mr.K. Selvaraj, learned counsel for the 2nd and 3rd respondents/2nd and 3rd defendants.

10. The parties shall be referred as plaintiff and defendants for the sake of convenience.

11. Mr. R. Prabakar, learned counsel pointed out the issue of limitation and argued that the plaintiff had admitted in the plaint that he applied for certified copies of the documents relating to the 2 items of suit property on 01.06.2015. The certified copies were also filed as documents. The plaintiff had not given any reason for not including the reliefs now sought by way of amendment when filing the suit in the first instance. The learned counsel pointed out that the application seeking amendment was filed only on 28.11.2018 and stated that the relief was barred by the law of Limitation. He urged that that the order under revision should be interfered with and the revision be allowed.

12. Mr. N. Manokaran, however stated that the documents had been disclosed in the plaint and certified copies had also been filed along with the plaint. Learned Counsel therefore stated that the plaintiff was not introducing a new fact. There was no change of status in the nature of the suit. The plaintiff was not a party to the said settlement deeds, but since they cast a shadow over title, it was imperative that reliefs are sought to declare them as null and void. Learned counsel stated that no prejudice would be caused by permitting such amendment. He also stated that since it was consequential to the relief already sought, the issue of limitation would not arise, and at any rate the same can be raised as an issue and answered on analysis of the evidence. The learned Counsel stated that the revision has to be dismissed.

13. I have carefully considered the records and the arguments advanced.

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14. The suit in O.S. No. 344 of 2015 had been primarily filed for partition and separate possession of 2 items of suit property. Even in the plaint, the plaintiff had stated that though the properties have an ancestral nucleus, his grandfather had executed two settlement deeds on 07.11.2006 with respect to each one of the 2 properties in favour of his son, the 1st defendant. It had been further stated the 1st defendant had then executed settlement deeds 13.11.2014 in favour of the 5th defendant and on 21.07.2015 in favour of the 4th defendant with respect to the 2 items of suit property. The said documents had also been mentioned in the cause of action paragraph. Certified copies of the documents had also been filed along with the plaint. It is thus seen that there was no suppression of any fact by the plaintiff. The plaintiff had however stated that the said settlement deeds have no legal sanctity and are nonest. He had not sought any relief to declare that they are null and void.

15. The amendment seeking such a relief had been filed on 28.11.2018. This fact has been pointed out by Mr. R. Prabakar, who stated that the application for amendment had been filed after three years, when

admittedly the plaintiff had claimed that he came to know about the said documents on 01.06.2015.

16. In *South Konkan Distilleries and another –vs – Prabhakar Gajanan Naik and others* reported in (2008) 14 SCC 632, the Hon’ble Supreme Court examined a case where an amendment was sought to be introduced and it was contested on the ground that the amended claim was barred by limitation. The Hon’ble Supreme Court balanced that contention with the further contention that the amendment merely adds to the facts already on record. The Hon’ble Supreme Court observed and held as follows :

“11. Before we deal with the orders of the courts below, as to whether the application for amendment of the written statement and the counterclaim was rightly rejected or not, let us consider the laws on the question of allowing or rejecting a prayer for amendment of the pleadings when the plea of limitation was taken up by one of the parties in the suit. It is well settled that the court must be extremely liberal in granting the

prayer for amendment, if the court is of the view that if such amendment is not allowed, a party, who has prayed for such an amendment, shall suffer irreparable loss and injury. It is also equally well settled that there is no absolute rule that in every case where a relief is barred because of limitation, amendment should not be allowed. It is always open to the court to allow an amendment if it is of the view that allowing of an amendment shall really subserve the ultimate cause of justice and avoid further litigation.

12. In *L.J. Leach & Co. Ltd. v. Jardine Skinner & Co.* [AIR 1957 SC 357] this Court at para 16 of the said decision observed as follows: (AIR p. 362)

“16. 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.”

13. Again, in *T.N. Alloy Foundry Co. Ltd. v. T.N. Electricity Board* [(2004) 3 SCC 392] this Court observed as follows: (SCC p. 393, paras 2-3)

“2. ... The law as regards permitting amendment to the plaint, is well settled. In *L.J. Leach and Co. Ltd. v. Jardine Skinner and Co.* [AIR 1957 SC 357] it was held that the Court 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 this 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.

3. It is not disputed that the appellate court has a coextensive power of the trial court. We find that the discretion exercised by the High Court in rejecting the plaint was in conformity with law.”

14. From the above, therefore, one of the cardinal principles of law in allowing or rejecting an application for amendment of the pleading is that the courts generally, as a rule, decline to allow amendments, if a fresh suit on the amended claim would be barred by limitation on the date of filing of the application. But that

would be a factor to be taken into account in the 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 is required in the interest of justice.

15. In Ragu Thilak D. John v. S. Rayappan [(2001) 2 SCC 472] this Court also observed that *where the amendment was barred by time or not, was a disputed question of fact and, therefore, that prayer for amendment could not be rejected and in that circumstances the issue of limitation can be made an issue in the suit itself.* In a decision in *Vishwambhar v. Laxminarayan [(2001) 6 SCC 163]*, this Court held that the amendment though properly made cannot relate back to the date of filing of the suit, but to the date of filing of the application. Again, in *Vineet Kumar v. Mangal Sain Wadhera [(1984) 3 SCC 352 : AIR 1985 SC 817]* this Court held that *if a prayer for amendment merely adds to facts already on record, the amendment would be allowed even after statutory period of limitation."*

17. The facts of the instant case will have to now analysed on the basis of the dictum laid above.

18. The Doctrine of Relation Back was examined by the Hon'ble Supreme Court.

19. The plaintiff had pleaded and disclosed the settlement deeds which he seeks to be declared as null and void in the plaint. The amendment relates back to that pleading. If the plaintiff had suppressed the said documents, and had sought partition, then, he can never introduce any prayer with respect to the said documents. However, he had disclosed the documents. The plaintiff will have to be given an opportunity to explain what exactly he meant by 'inadvertence' which he had advanced as the reason for not seeking the reliefs in the plaint in the first instance. Any explanation given will have to withstand cross examination. The issue of limitation therefore becomes an intricate question of fact, which will have to be resolved first, and resolution can be done only through analysis of evidence which is adduced on this aspect.

20. It must also be pointed out the plaintiff had pleaded that the settlement deeds are nonest and not valid in the eyes of law. He had based his case seeking partition on the ground that the properties are ancestral in nature. If that fact is established by him, then he can certainly seek to avoid the settlement deeds. He is a non-executant thereto. Thus again, issues of fact mixed with law come up for resolution. The 1st, 4th and 5th defendants will certainly question the bonafide of the plaintiff's claim that he came to be aware of the settlement deeds only on 01.06.2015. They are registered documents. That can be done when he grazes the witness box. Again evidence is required to determine those issues.

21. Viewed from any angle, I hold that the amendment sought does not bring about a new cause of action. It surrounds the facts already pleaded. It is related to the facts already pleaded in the plaint. That, in essence of the Doctrine of Relation Back.

22. I hold that the learned Sub Judge, Bhavani was correct in permitting the amendment sought. The order dated 17.07.2019 allowing I.A. No. 1376 of 2018 is upheld. However, the defendants may be given an

opportunity to file additional written statement, and an issue on limitation with specific reference to the reliefs sought will have to be framed. The plaintiff may also be given an opportunity to file additional proof affidavit. I am confident that the Learned Sub Judge would certainly afford opportunity to the defendants to cross examine P.W.1 and thereafter analyse the evidence and deliver judgment in accordance with law.

23. In view of the above observations, I hold that the Civil Revision Petition has to be dismissed and it is accordingly dismissed. No order as to costs. Consequently, connected Miscellaneous Petition is closed.

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Index: Yes/No

Internet: Yes/No.

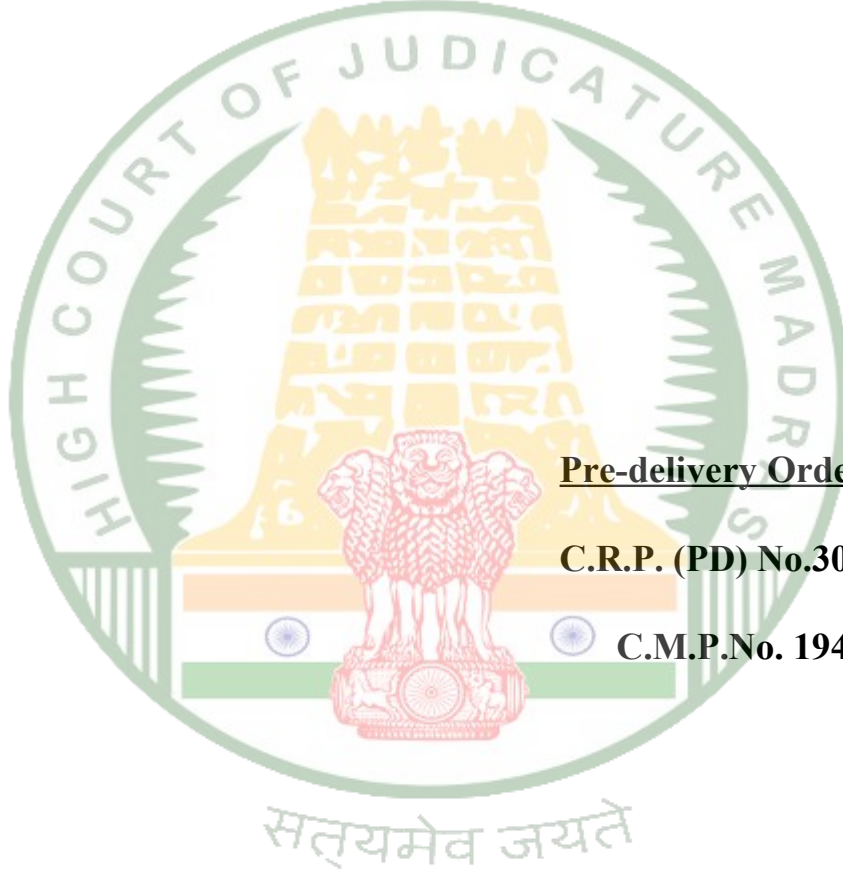
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C.V.KARTHIKEYAN, J.

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Pre-delivery Order made in

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