

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.03.2021

PRONOUNCED ON : 07.04.2021
CORAM

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

C.R.P.(PD) No.4042 of 2017
and CMP No.18889 of 2017

K.Palanisamy

... Petitioner

Vs.

1.R.Muthusamy

2.K.Myilsamy

... Respondents

Prayer :- Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the Fair and Decreetal Order dated 13.09.2017 made in I.A.No.922 of 2017 in O.S.No.120 of 2012 passed by the I Additional District and Sessions Judge, Tiruppur.

For Petitioner : Mr.S.Ramesh

For Respondents : Mr.C.R.Prasannan

ORDER

The Civil Revision Petition is filed against the fair and decreetal order dated 13.09.2017 made in I.A.No.922 of 2017 in O.S.No.120 of 2012 on the file of the I Additional District and Sessions

Judge, Tiruppur, thereby dismissing the petition seeking amendment of plaint to include the prayer of declaration.

2. The petitioner is the plaintiff and the respondents are the defendants. The petitioner filed a suit for declaration and consequential permanent injunction in respect of the suit properties comprised in Survey Nos.367/2 and 400/2 situated at Icchipatti Village, Palladam Taluk, Tiruppur District. The petitioner filed a petition for amendment to include the prayer of declaration declaring that the sale deed dated 05.11.1924 as null and void and the same was dismissed. Aggrieved by the same, the present Civil Revision Petition.

3. The learned counsel for the petitioner would submit that the petitioner is the absolute owner of the properties comprised in Survey Nos.367/2 and 400/2 situated at Icchipatti Village, Palladam Taluk, Tiruppur District, and the same having been settled in his favour by his wife Lakshmi by a registered settlement deed dated 27.01.2004. The suit properties were part of a large extent and the same was originally owned by one Muthu Gounder. He had three sons. Except one son Mr.Raya Gounder, the other two sons died intestate without any issues. Therefore,

the entire properties vested back to legal heirs of one Raya Gounder. During his life time, he conveyed a portion of the property to his minor two sons viz., Muthu Gounder and Karuppa Gounder. The said Muthu Gounder died intestate without any issues and another son Karuppa Gounder has one daughter viz., Lakshmi, wife of the petitioner herein. Thereafter, the said Karuppa Gounder also died on 09.06.2010. The said Lakshmi, being the only legal heir, executed a settlement deed in favour of the petitioner herein in respect of the suit properties. While being so, the defendants attempted to disturb the possession of the suit property. Therefore, the petitioner was constrained to file a suit in O.S.No.293 of 2005 on the file of the District Munsif, Palladam, for declaration of title and permanent injunction in respect of the suit property.

4. In the written statement, the respondents claimed that the said Raya Gounder viz., the petitioner's wife's grandfather alienated the entire property comprising in Survey No.367/2 by a registered sale deed dated 05.11.1924. Thereafter, the respondents also filed a suit for partition in O.S.No.731 of 2008, including the properties owned by the petitioner on the strength of the sale deed dated 05.11.1924. In the said suit, the petitioner also filed a written statement, challenging the validity

of the sale deed executed by Raya Gounder on the ground that he had three sons and he had only 1/3rd share in the suit property and also he could not have conveyed the entire property on 05.11.1924. Thereafter, both the suits were clubbed together and transferred to the Additional District Court, Tiruppur and also joint trial was ordered. Therefore, it is just a necessary for the petitioner to declare the said sale deed dated 05.11.1924 as null and void and hence he filed a petition for amendment to include the prayer of declaration.

5. The Court below dismissed the petition only for the reason that the petition was filed after 12 years of the execution of sale deed and as such the claim of the petitioner is barred by limitation. In support of the contention, the learned counsel for the petitioner relied upon the following judgments :

1. **2008 (14) SCC 632** (South Konkan Distilleries and another Vs. Prabhakar Gajanan Naik and others)

2. **2009 (10) SCC 84** (Revajeetu Builders and Developers Vs. Narayanaswamy and sons and others)

3. **2016 (1) SCC 332** (L.C. Hanumanthappa (since died) Rep. by his Legal Representatives Vs. H.B. Shivakumar)

4. **2017 (5) SCC 212** (Chakreshwari Construction Private Limited Vs. Manohar Lal)

5. **2007 (5) CTC 595** (Church of South India Trust Association Vs.Kovil Pillai and others)

6. Per contra, the learned counsel for the respondents submitted that the petition for amendment itself is an abuse of process of law and it was filed only to drag on the case endlessly. The suit is of the year is 2005, being filed on 19.09.2005. Immediately, on 20.10.2005 itself the respondents filed their written statement. In their written statement, they specifically stated that Raya Gounder had no right or title in the property comprised in Survey No.367/2 and also the property ad-measuring to an extent of 2.85 acres comprising in Survey No.400/2 situated at Icchipatti Village, Palladam Taluk, Tiruppur District. By the sale deed dated 05.11.1924, the said Raya Gounder had sold an extent of 7.20 acres in Survey No.367/2 and an extent of 1.14 acres in Survey No.400/2 situated at Icchipatti Village to one Sri Lingea Gounder by the registered sale deed document No.2234 of 1924. As per the said sale deed, the said Raya Gounder had lost his right and title in respect of the suit properties. He had right and title only to an extent of 2.28 acres in Survey No.400/2 situated at Icchipatti Village, Palladam Taluk, Tiruppur District. Therefore, the petitioner cannot claim title on the basis of the

patta dated 31.07.1981. After the sale deed dated 05.11.1924, the purchasers are in possession and enjoyment of the suit properties. Therefore, the petitioner or his wife or his father-in-law were never in possession and enjoyment of the suit properties. After purchase of the suit properties, patta No.838 has been granted in favour of the purchasers. Even then the petitioner did not take immediate steps to challenge the sale deed dated 05.11.1924. After filing the written statement on 20.10.2005, both the suits were transferred to the Fast Track Court No.2 and due to District bifurcation, again both suits were transferred to Tiruppur and now they are pending on the file of 1st Additional District Court, Tiruppur.

7. On 19.07.2017, the first respondent was examined as P.W.1 and documents were marked as Exs.A1 to A17. Thereafter, the suits were posted for cross-examination of P.W.1 and at that juncture, without cross examine the P.W.1, the petitioner herein filed a petition for amendment. Therefore, it is clearly barred by limitation and the Court below rightly dismissed the petition for amendment on the ground of limitation. In support of the contention, the learned counsel for the respondents relied upon the following judgments :

1. **1996 (7) SCC 486** (Radhika Devi Vs. Bajrangi Singh and others)

2. **2016 (1) SCC 332** (L.C.Hanumanthappa (since died) Rep. by his Legal Representatives Vs.H.B.Shivakumar)

3. **2017 (2) MWN (Civil) 18** (A.Kumaran Vs. Letchumana Mudaliar (Died) and others)

4. **2018 SCC Online Mad 2041** (M/s.Blue Marine Logistics Private Limited Vs. United India Insurance Company Limited)

8. Heard Mr.Mr.S.Ramesh, learned counsel appearing for the petitioner and Mr.C.R.Prasannan, learned counsel appearing for the respondents.

9. The petitioner is the plaintiff and the respondents are the defendants. The petitioner has filed a suit for declaration and injunction in respect of the suit properties on 19.09.2005 in O.S.No.293 of 2005. Thereafter, the respondent and others have filed a suit for partition in respect of the very same properties. Therefore, both suits were clubbed together, after District bifurcation transferred to the 1st Additional District Court, Tiruppur. The first respondent was examined as P.W.1 and documents were marked as Ex.Ps.A1 to A17. After filing the suit,

immediately on 20.10.2005, the respondents filed their written statement and categorically stated that the suit properties were already sold by the registered sale deed dated 05.11.1924 by the said Raya Gounder. Therefore, the said Raya Gounder had no right or title over the suit properties. Therefore, the said Lakshmi, the granddaughter of the said Raya Gounder had no title over the property, the settlement deed executed in favour of the petitioner herein is not valid one. Even then the petitioner did not file any petition for amendment to include the prayer of declaration challenging the sale deed dated 05.11.1924. Further revealed that immediately after the sale deed, the purchasers were in possession and enjoyment of the properties and also granted patta in Patta No.838. Therefore, the petition for amendment filed to challenge the sale deed after a period of 94 years from the date of registration of the sale deed.

10. The learned counsel for the petitioner relied upon the judgment reported in **2008 (14) SCC 632** in the case of **(South Konkan Distilleries and another Vs. Prabhakar Gajanan Naik and others)**, in which this Court held as follows :-

“ 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 sub serve the ultimate cause of justice and avoid further litigation.

11. He also relied upon the judgment of the Hon'ble Supreme Court of India reported in **2009 (10) SCC 84** in the case of **(Revajeetu Builders and Developers Vs.Narayanaswamy and sons and others)** which reads as follows :-

“ The first condition which must be satisfied before the amendment can be allowed by the court is whether such amendment is necessary for the determination of the real question in controversy. If that condition is not satisfied, the amendment cannot be allowed. This is the basic test which should govern the courts' decision in grant or refusal of the amendment.

Some basic principles which ought to be taken into consideration while allowing or rejecting the application for amendment are : (i) whether the amendment sought is imperative for proper and effective adjudication of the case; (ii) whether the application for amendment is bona fide or mala fide ; (iii) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money ; (iv) refusing amendment would in lead to injustice or lead to multiple litigation ; (v) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case ; and (iv) as a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by the law of limitation on the date of application. The fact that the claim is barred by the law of limitation is but one of the factors to be taken into account by the court in exercising the discretion as to whether the amendment should be allowed or refused, but it does not affect the power of the court if the amendment is required in the interests of justice”.

12. The Hon'ble Supreme Court of India held that the Court must be extremely liberal in granting the prayer for amendment, if the Court is of the view that such amendment is not allowed to the party to pray for

such amendment is imperative for proper and effective adjudication of the case. It further held that the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money.

13. In the case of the hand as stated supra, the sale deed dated 05.11.1924 is under challenge by way of amendment. The written statement was filed as early as on 20.10.2005 and it categorically stated about the sale deed executed by the said Raya Gounder on 05.11.1924. Subsequent to the purchase, there are so many sale deeds in respect of the suit properties and as such it would cause serious prejudice to the respondents if the amendment is allowed. Therefore, the above judgments are not helpful to the case on hand.

14. The learned counsel for the respondents relied upon the judgement reported in **1996 (7) SCC 486** in the case of **(Radhika Devi Vs. Bajrangi Singh and others)**, in which this Court held as follows :-

“4. The registration of the document is a notice to everyone claiming any right, title ad interest therein ; even otherwise, the respondents in the written

statement filed on 15.06.1988 has specifically pleaded about the gift being made by Ramdeo Singh in their favour. Despite that, the appellant had not taken any steps till November 1992 by which time even the suit for declaration within the limitation of three years from the date of knowledge had got time-barred. Therefore, the appellant is not entitled to amend the plaint which would prejudicially affect the rights of the respondents.

15. The learned counsel for the respondents also relied upon the judgment of the Hon'ble Supreme Court of India reported in 2. **2016 (1) SCC 332** in the case of ***(L.C.Hanumanthappa (since died) Rep. by his Legal Representatives Vs.H.B.Shivakumar)***, which reads as follows :-

27. In *Van Vibhag Karamchari Griha Nirman Sahkari Sanstha Maryadit (Registered) v. Ramesh Chander and Ors.*, (2010) 14 SCC 596, this Court considered a suit which was originally filed for declaration of ownership of land and for permanent injunction. The suit had been filed on 11th February, 1991. An amendment application was moved under Order VI Rule 17 of the Code of Civil Procedure on 16th December, 2002 for inclusion of the relief of specific performance of contract. This Court in no uncertain terms refused the midstream change made in the suit, and held:- In the *L.C. Hanumanthappa (Since ... vs H.B.Shivakumar* on 26 August, 2015 Indian Kanoon -

*<http://indiankanoon.org/doc/153942728/> 10 present case, the factual situation is totally different and the appellants have not filed any suit for specific performance against the first respondent within the period of limitation. In this context, the provision of Article 54 of the Limitation Act is very relevant. The period of limitation prescribed in Article 54 for filing a suit for specific performance is three years from the date fixed for the performance, or if no such date is fixed, when the plaintiff has notice that performance is refused. Here admittedly, no date has been fixed for performance in the agreement for sale entered between the parties in 1976. But definitely by its notice dated 3-2-1991, the first respondent has clearly made its intentions clear about refusing the performance of the agreement and cancelled the agreement. Even though the prayer for amendment to include the relief of specific performance was made about 11 years after the filing of the suit, and the same was allowed after 12 years of the filing of the suit, such an amendment in the facts of the case cannot relate back to the date of filing of the original plaint, in view of the clear bar under Article 54 of the Limitation Act. Here in this case, the inclusion of the plea of specific performance by way of amendment virtually alters the character of the suit, and its pecuniary jurisdiction had gone up and the plaint had to be transferred to a different court. This Court held in *Vishwambhar v. Laxminarayan* [(2001) 6 SCC 163]*

, if as a result of allowing the amendment, the basis of the suit is changed, such amendment even though allowed, cannot relate back to the date of filing the suit to cure the defect of limitation (SCC at pp. 168-69, para 9). Those principles are applicable to the present case. [at paras 24, 25 and 32]

28. In Prithi Pal Singh and Anr. v. Amrik Singh and Ors., (2013) 9 SCC 576, this Court was concerned with a suit claiming pre-emption under the Punjab Pre-emption Act, 1913. An amendment was sought to the plaint claiming that the plaintiff was entitled to relief as a co-sharer of the suit property. This Court after considering some of its earlier judgments held:-

In our opinion, there is no merit in the submissions of the learned counsel. A reading of the order passed by this Court shows that the application for amendment filed by Respondent 2 was allowed without any rider/condition. Therefore, it is reasonable to presume that this Court was of the view that the amendment in the plaint would relate back to the date of filing the suit. That apart, the learned Single Judge has independently considered the issue of limitation and rightly concluded that the amended suit was not barred by time. [at para 11]

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 plaintiffs 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 plaintiffs 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 plaintiffs L.C. Hanumanthappa (Since ... vs H.B.Shivakumar on 26 August, 2015 Indian Kanoon - <http://indiankanoon.org/doc/153942728/> 11 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.

16. The Hon'ble Supreme Court held that the registration of the documents is a notice to everyone claiming any right, title or interest therein. Further held that the prayer for amendment to include the relief of specific performance was made about 11 years after the filing the suit and the same was allowed after 12 years of the filing the suit such an amendment in the facts of the case cannot relate back to the date of filing of the original plaint, in view of the clear bar under Article 54 of the Limitation Act.

17. In the case on hand, despite the fact that the respondents filed a written statement as early as on 20.10.2005 and stated about the sale deed dated 05.11.1924, the petitioner did not chose to file any petition to include the prayer of declaration declaring the sale deed as null and void. Therefore the prayer sought for the amendment petition is clearly time barred one and the Court below rightly dismissed the petition for amendment.

18. In view of the above discussion, this Court finds no illegality or infirmity in the order passed by the trial Court. Accordingly, the Civil Revision Petition stands Dismissed. No costs. Consequently connected miscellaneous petition is closed.

07.04.2021

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Index: Yes/No
Internet: Yes/No
Speaking Order: Yes/No

To

I Additional District and Sessions Judge,
Tiruppur.

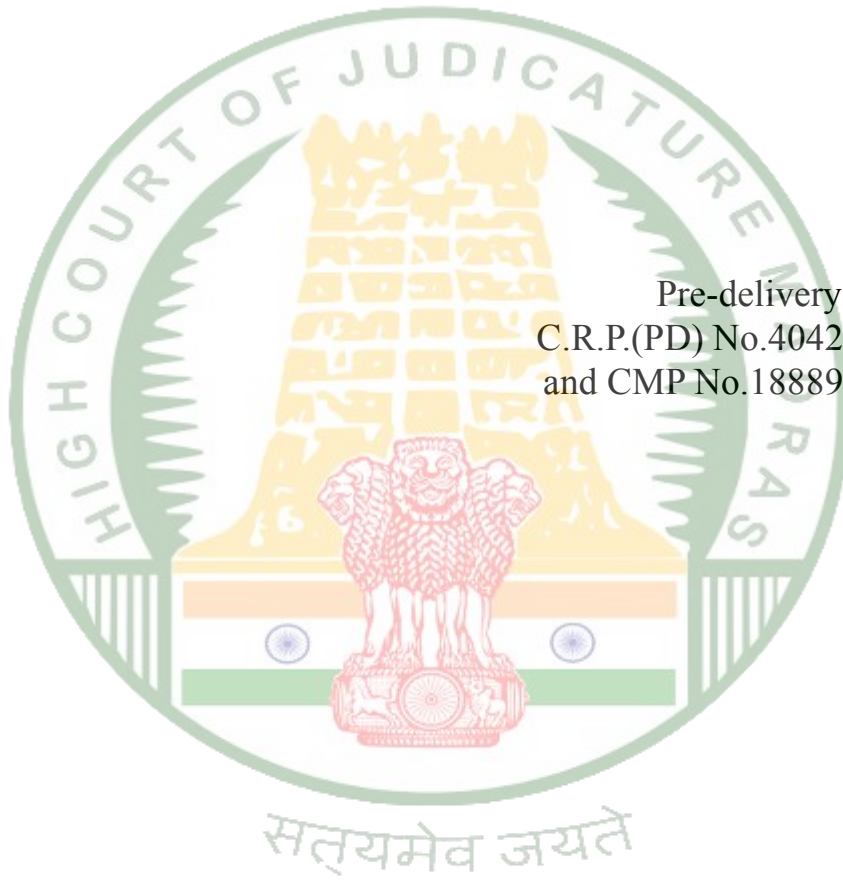


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