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CRP(MD)No.406 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.07.2021

(Reserved on 10.02.2021)

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CRP(MD)No.406 of 2019
and
CMP(MD)No.2036 of 2019

R.Yogaprise ... Petitioner /Petitioner/Plaintiff

vs.

1)Pasupathy

2)Minnal Kodi

Mrs.Saradha (Died)

3)Minor Sanjai

4)Minor Laksha Deepan

5)Minor Lathika

6)Ochappan

7)Murugan

8)Periyakaruppan ... Respondents/Respondents/Defendants

Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 21.12.2018 passed in I.A.No.422 of 2018 in O.S.No.156 of 2010 on the file of the District Munsif cum Judicial Magistrate No.1, Usilampatti.

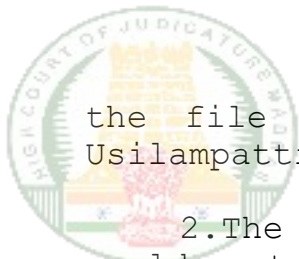
For petitioner : Mr.K.Nagendra Prasad

For respondents 1 to 6 : Mr.K.K.Samy
& 8

For 7th respondent : No appearance

ORDER

This revision petition has been filed against the order dated 21.12.2018 passed in I.A.No.422 of 2018 in O.S.No.156 of 2010 on <https://hcservices.ecourts.gov.in/hcservices/>



the file of the District Munsif cum Judicial Magistrate No.1, Usilampatti.

2.The learned counsel for the revision petitioner/plaintiff would state that he filed the above suit against the respondents/defendants for the relief of partition of the suit schedule properties. The petitioner is the son of one Rajangam and his mother is Mayilammal and both of them died. The 1st defendant is the second wife of the petitioner's father Rajangam and defendants 2 and 3 born to the petitioner's father through the 1st defendant. The 3rd defendant died on 22.07.2010. The respondents 3 to 5/defendants 4 to 6 are her legal heirs and the respondents 6 to 8/defendants 7 to 9 are subsequent purchasers of the suit properties. In the suit, the defendants filed written statement on 23.09.2011 taking a defence that on accepting Rs.2,000/- the petitioner has executed a release deed dated 27.07.1998, extinguishing his rights from the joint family properties and therefore, the petitioner filed the present interlocutory application to amend the prayer in the plaint by adding the relief of declaration declaring the said release deed dated 27.07.1998 as null and void. The trial Court, by the impugned order dated 21.12.2018, dismissed the petition for amendment that since the petitioner has not filed the present petition within three years from the date of written statement, it is barred by limitation, against which, this revision is filed.

3.The learned counsel for the petitioner would state that though the written statement was filed on 23.09.2011 alleging that the petitioner executed the release deed, the said deed was marked before the trial Court only on 06.08.2018 and the present petition has been filed on 20.09.2018 ie., within 3 years therefrom and hence, it is well within the period of limitation, but the trial Court has erroneously dismissed the petition on the ground of limitation. He would further state that application for amendment has to be considered and decided along with other issues of the suit and it should not be summarily dismissed on the ground of limitation.

4.The learned counsel for the petitioner would further state that the alleged release deed was not a listed document along with the written statement and it was marked only on 06.08.2018 ie., after 6 years, in violation of the mandatory provision Order 8 Rule 1A(3) CPC. The 1st respondent /1st defendant himself has admitted in paragraph 6 of the written statement that after the demise of the petitioner's/plaintiff's mother, his grandfather took the petitioner/plaintiff to his village and more than 40 years, there was no contact and relationship between the plaintiff and his father as well the defendants. The said averment itself would *prima facie* prove that the alleged release deed is forged one and without considering the same, the Court below has mechanically dismissed the petition. Thus, he prayed to set aside the impugned order



and to allow the amendment petition.

5. The learned counsel for the respondents 1 to 6 would state that the petitioner has wantonly suppressed the execution of the release deed dated 27.07.1998 in the plaint and though he came across the averments of the written statement as to the release deed in the year 2011 itself, till 2018, he did not take steps either to cancel the release deed or to file amendment petition. He would further state that by way of amendment, the petitioner is seeking new relief which is not admissible and the amendment petition filed after commencement of trial cannot be entertained as per Order VI Rule 17 of C.P.C.

6. The learned counsel for the respondents 1 to 6 further submitted that the said deed has been registered on the file of the Sub Registrar, Usilampatti and therefore, it cannot be said to be forged. It is further submitted that even after knowing the release deed from the written statement in 2011, the petitioner could have very well applied for certified copy of the said document from the Registration Department and filed the present petition to rebut the execution of the release deed, but he did not do so and kept silent. The said attitude itself would show that the petitioner is adopting delaying tactics. The limitation is a mixed question of law and since the release deed is registered by a public authority, the trial Court has rightly dismissed the amendment petition. Thus, he prayed to dismiss this revision petition.

7. Heard the learned counsel for the petitioner as well as the respondents 1 to 6 & 8. Though notice served, none appeared on behalf of the 7th respondent.

8. Before going into the issue involved in this petition, this Court is inclined to refer to some of the decisions of the Hon'ble Apex Court.

(a) In the case of **Pankaja and another Vs. Yellappa** reported in **2004 (6) SCC 415**, the Hon'ble Apex Court has held as follows:

"11. So far as the Court's jurisdiction to allow an amendment of pleadings is concerned there can be no two opinion that the same is wide enough to permit amendments even in cases where there has been substantial delay in filing such amendment applications. This Court in numerous cases has held the dominant purpose of allowing the amendment is to minimize the litigation, therefore, if the facts of the case so permits, it is always open to the court to allow applications in spite of the delay and laches in moving such amendment application.

12. But the question for our consideration is whether in cases where the delay has extinguished



the right of the party by virtue of expiry of the period of the period of limitation prescribed in law, can the court in the exercise of its discretion take away the right accrued to another party by allowing such belated amendments?

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13. The law in this regard is also quite clear and consistent that there is no absolute rule that in every case where a relief is barred because of limitation an amendment should not be allowed. Discretion in such cases depends on the facts and circumstances of the case. The jurisdiction to allow or not allow an amendment being discretionary the same will have to be exercised in a judicious evaluation of the facts and circumstances in which the amendment is sought. If the granting of an amendment really subserves the ultimate cause of justice and avoids further litigation the same should be allowed. There can be no straight jacket formula for allowing or disallowing an amendment of pleadings. Each case depends on the factual background of that case.

14. The law in this regard is also quite clear and consistent that there is no absolute rule that in every case where a relief is barred because of limitation an amendment should not be allowed. Discretion in such cases depends on the facts and circumstances of the case. The jurisdiction to allow or not allow an amendment being discretionary, the same will have to be exercised on a judicious evaluation of the facts and circumstances in which the amendment is sought. If the granting of an amendment really subserves the ultimate cause of justice and avoids further litigation the same should be allowed. There can be no straightjacket formula for allowing or disallowing an amendment of pleadings. Each case depends on the factual background of that case."

(b) In the case of **Puran Ram Vs. Bhaguram reported in 2008 (4) SCC 102**, the Hon'ble Apex Court has held as follows:

"19. Before parting with this judgment, we may deal with the submission of the learned counsel for the respondent that the application for amendment could not be allowed inasmuch as the same was barred by limitation. We are unable to accept this contention of the learned counsel for the respondents. In this regard, we may observe that the court may, in its discretion, allow an application



for amendment of the plaint even where the relief sought to be added by amendment is allegedly barred by limitation. This view was also expressed by this Court in *Pankaja Vs. Yellappa*--2004 (6) SCC 415. In that decision, it was held that there is no absolute rule that in such a case, the amendment should not be allowed and the discretion of the court in that regard depends on the facts and circumstances of the case and such discretion has to be exercised on a judicious evaluation thereof. It was further held in that decision that an amendment, which subserves the ultimate cause of justice and avoids further litigation, should be allowed.

(c) In the case of **Sampath Kumar Vs. Ayyakannu and another**, reported in **2002 (7) SCC 559**, the Hon'ble Apex Court has held as follows:

"9. Order 6 Rule 17 of the CPC confers jurisdiction on the Court to allow either party to alter or amend his pleadings at any stage of the proceedings and on such terms as may be just. Such amendments as are directed towards putting-form and seeking determination of the real questions in controversy between the parties shall be permitted to be made. The question of delay in moving an application for amendment should be decided not by calculating the period from the date of institution of the suit alone but by reference to the stage to which the hearing in the suit has proceeded. Pre-trial amendments are allowed more liberally than those which are sought to be made after the commencement of the trial or after conclusion thereof. In former case generally it can be assumed that the defendant is not prejudiced because he will have full opportunity of meeting the case of the plaintiff as amended. In the latter cases the question of prejudice to the opposite party may arise and that shall have to be answered by reference to the facts and circumstances of each individual case. No strait-jacket formula can be laid down. The fact remains that a mere delay cannot be a ground for refusing a prayer for amendment.

10. An amendment once incorporated relates back to the date of the suit. However, the doctrine of relation back in the context of amendment of pleadings is not one of universal application and in appropriate cases the Court is competent while permitting an amendment to direct that the amendment permitted by it shall not relate back to



the date of the suit and to the extent permitted by it shall be deemed to have been brought before the Court on the date on which the application seeking the amendment was filed. (See observation in Siddalingamma and Anr. v. Mamtha Shenoy, [2001] 8 SCC 561.

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11. In the present case the amendment is being sought for almost 11 Years after the date of the institution of the suit. The plaintiff is not debarred from instituting a new suit seeking relief of declaration of title and recovery of possession on the same basic facts as are pleaded in the plaint seeking relief of issuance of permanent prohibitory injunction and which is pending. In order to avoid multiplicity of suits it would be a sound exercise of discretion to permit the relief of declaration of title and recovery of possession being sought for in the pending suit. The plaintiff has alleged the cause of action for the reliefs now sought to be added as having arisen to him during the pendency of the suit. The merits of the averments sought to be incorporated by way of amendment are not to be judged at the stage of allowing prayer for amendment. However, the defendant is right in submitting that if he has already perfected his title by way of adverse possession then the right so accrued should not be allowed to be defeated by permitting an amendment and seeking a new relief which would relate back to the date of the suit and thereby depriving the defendant of the advantage accrued to him by lapse of time, by excluding a period of about 11 years in calculating the period of prescriptive title claimed to have been earned by the defendant. The interest of the defendant can be protected by directing that so far as the reliefs of declaration of title and recovery of possession, now sought for, are concerned the prayer in that regard shall be deemed to have been made on the date on which the application for amendment has been filed."

9. From the above decisions, it is very clear that the court may, in its discretion, allow an application for amendment of the plaint even where the relief sought to be added by amendment is allegedly barred by limitation. Before exercising discretion, the Court has to make judicious evaluation of the facts and circumstances of the case and to see whether if the amendment petition is allowed, it would really subserve the ultimate cause of justice and avoid further litigation.



10. In this case, the suit has been filed for the relief of partition. According to the defendants, the plaintiff has already executed registered release deed dated 27.07.1998 on receiving Rs.2,000/- in respect of his shares in the properties. According to the petitioner/plaintiff, his signature has been obtained fraudulently in the release deed. By way of amendment, the petitioner/plaintiff wanted to add the relief of declaration, declaring the release deed dated 27.07.1998 as null and void. Though the petitioner/plaintiff was brought to the knowledge about the release deed in the written statement itself, he has filed the petition for amendment belatedly. Now, the relief of partition sought for by the petitioner/plaintiff can be decided only on consideration of release deed dated 27.07.1998. The trial is not yet completed. In order to avoid multiplicity of proceedings and considering the fact that the issue involved in the suit will be decided once for all, the Court below could have allowed the petition. But, it has not been done so. Considering the length of delay in filing the petition for amendment, this Court is inclined to allow this petition with cost and with liberty to the respondents/defendants to raise the point of limitation at the time of trial.

11. In the result, this Civil Revision Petition is allowed and the order passed by the Court below dated 21.12.2018 is set aside and the petition for amendment is allowed subject to payment of cost of Rs.5,000/- (Rupees five thousand only) to the Chief Minister Relief Fund, within a period of four weeks from the date of receipt of a copy of this order, failing which the petition for amendment shall stand dismissed automatically without any further reference to the Court. The respondents/defendants are at liberty to raise the point of limitation at the time of trial. Considering the year of the suit, the Court below is directed to dispose of the suit within a period of six months from the date of receipt of a copy of this order. Both the parties are directed to cooperate with the trial Court for early disposal of the case. Consequently, connected miscellaneous petition is closed.

Sd/-

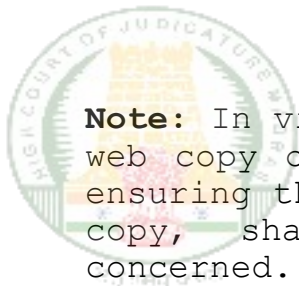
Assistant Registrar (T&P)

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Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

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To

1.The District Munsif cum Judicial Magistrate No.1,
Usilampatti.

2.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

Copy to

The Officer Incharge,
Chief Minister's Public Relief Fund,
Secretariate, Chennai 600 009.

+1 CC to M/s.K.NAGENDRA PRASAD, Advocate (SR-23404[F] dated
22/07/2021)

+1 CC to M/s.K.K.SAMY, Advocate (SR-23585[F] dated 22/07/2021)

CRP(MD)No.406 of 2019

DATED : 22 .07.2021

RK (30.07.2021) 8P 7C