



WEB COPY

C.R.P(PD)No.1557 of 2016



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	25.03.2022
Pronounced on	11.04.2022

CORAM :
THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Civil Revision Petition (PD) No.1557 of 2016

V.Gunasekaran ... Petitioner

Vs.

1. P.Uma Devi
2. R.Subramanian
3. S.Chithiraikani ... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decreetal order dated 06.03.2015 made in I.A.No.892 of 2014 in O.S.No.556 of 2008 on the file of the III Additional District Munsif Court, Coimbatore.

For Petitioner : Mr.P.Valliappan
For Respondent 1 : Mr.P.Saravana Sowmiyan
For Respondents 2 & 3 : Given-up



ORDER

This Civil Revision Petition has been filed by the petitioner challenging the fair and deecretal order passed by the learned III Additional District Munsif Court, Coimbatore in I.A.No.892 of 2014 in O.S.No.556 of 2008 dated 06.03.2015, allowing the Interlocutory Application for amending the plaint.

2. The learned counsel for the petitioner submitted that the revision petitioner is the third defendant in the suit. The first respondent/plaintiff has filed the suit in O.S.No.556 of 2008 before the III Additional District Munsif Court, Coimbatore for the following relief:

a) declaring that sale deed dated 22.01.2003 executed by in the name of P.Uma Devi in favour of the 1st defendant Document No.124/2003, settlement deed dated 27.06.2007 executed by the 1st defendant in favour of the 2nd defendant Document No.4285/2007, Sale deed dated 27.07.2007 executed by 2nd defendant in favour of the 3rd defendant Document No.4804/2007 are null and void and not binding on the Plaintiff.

b) for the Permanent Injunction restraining the defendants, their men and agents from any manner interfering with the plaintiff's peaceful



possession and enjoyment of the suit property.

c) for the Permanent Injunction restraining the 3rd defendant, his men and agents from any manner alienating or encumbrance the suit property.

d) directing such of those defenants who in custody of the orgiinal sale deed dated 28.03.1988 (Document No.1672/1988) in favour of the plaintiff to be handed over to the plaintiff by way of mandatory injunction.

e) directing the defendants to pay the costs of the suit.

After the filing of the suit, the 1 & 2 defendants/ 2 & 3 respondents and the third defendant/revision petitioner have filed their written statements on 04.11.2008 and 06.11.2008, denying the averments made by the first respondent/plaintiff.

2.1. Then, the revision petitioner/third defendant has filed the written statement in O.S.No.556 of 2008 stating that he has purchased the property on 27.07.2007 under document No.4804/2007 and the same was purchased for valid consideration, since, from the date of purchase, the revision petitioner/third defendant was in possession and enjoyment of the suit schedule property. Moreover, he has constructed a house after getting an



approval from the concerned authorities and also been assessed to property tax.

WEB COPY

3. The learned counsel for the petitioner further submitted that while the suit is pending, the first respondent/plaintiff has filed an Interlocutory Application in I.A.No.892 of 2014 under Order VI Rule 17 and Section 151 of C.P.C, seeking to amend the plaint. The detail of the amendment as follows:

(i) In the plaint ADD para IXA “During the pendency of the suit proceedings, the 3rd defendant trespassed forcibly into the suit property and put up an unauthorized hallow block construction measuring about 400 sq.ft. illegally on the north western side of the suit property”.

4. The learned counsel for the petitioner contended that the revision petitioner/third defendant has filed a counter statement in support of the aforesaid Interlocutory Application, in which, he has stated that the suit is filed in the year 2008 and now, this Interlocutory Application for demolition of building is belatedly filed after a period of six years i.e., in the year 2014. Further, the application is clearly barred by limitation and the same is to be



dismissed in limine.

WEB COPY

4.1. The first respondent/plaintiff has not even visited the suit schedule property for years as she has disposed off the same much prior to the suit and While filing the suit, she was also aware of the building etc,. The revision petitioner/third defendant has clearly mentioned the details of the building and approval particulars in the written statement filed as early as on 06.11.2008, which is six years prior to the filing of this Interlocutory Application in I.A.No.892 of 2014.

4.2. Hence, the first respondent/plaintiff is aware about the presence of the building from the written statement filed by the revision petitioner/third defendant and she has no title, ownership or possession of the suit schedule property. Moreover, there is no sufficient or valid reason adduced by the first respondent/plaintiff for the inordinate delay of six years in filing the application. Therefore, the Interlocutory Application, which has filed at the trial stage is just to protract the proceedings.

5. The learned counsel for the petitioner further contended that the



building has been constructed before the year 2007, which is prior to the filing of the suit in the year 2008. However, the building was constructed after getting an approval from the concerned authorities i.e., from the Saravanapati Panchayat, Coimbatore. Moreover, the extent of the building has not been mentioned in the order passed by the trial Court dated 06.03.2015 and the application is clearly barred by limitation. For better appreciation, the relevant paragraph of the Limitation Act, 1963 is extracted hereunder:

LIMITATION OF SUITS, APPEALS AND APPLICATIONS

3. Bar of limitation.-(1) *Subject to the provisions contained in sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence.*

(2) *For the purposes of this Act,-*

(a) *A suit is instituted,-*

(i) *in an ordinary case, when the plaint is presented to the proper officer;*

(ii) *in the case of a pauper, when his application for leave to sue as a pauper is made; and*

(iii) *in the case of a claim against a company which is being wound up by the Court, when the claimant first sends in his claim to the official liquidator;*

(b) *any claim by way of a set off, or a counter claim, shall be treated as a separate suit and shall be deemed to have been instituted-*



(i) in the case of a set off, on the same date as the suit in which the set off is pleaded;

(ii) in the case of a counter claim, on the date on which the counter claim is made in Court;

(c) an application by notice of motion in a High Court is made when the application is presented to the proper officer of that Court.

6. The learned counsel for the petitioner also placed reliance on the Article 113 & 58 of the Limitation Act, 1963. For better appreciation both the Articles are extracted hereunder:

Article-113:

“Any suit for which no period of limitation is provided elsewhere in this Schedule and the period of limitation is three years from the time when the right to sue accrue”.

Article-58:

“To obtain any other declaration and the period of limitation is three years from the date when the right to sue first accrues”.

In this case, the suit was filed in the year 2008 for permanent injunction and the written statement dated 06.11.2008, which was filed by the revision petitioner/third defendant has clearly stated that the building is constructed prior to the year 2007. So, according to this, time for the right to sue accrues from the date, the first respondent/plaintiff came to know the existence of the building.



WEB COPY

6.1. Hence, if it is computed from the date of construction of the building and the date of written statement, the period of limitation is over by 2010 and 2011 and according to the Article 113 of Limitation Act, 1963, the limitation period for filing the suit for mandatory injunction is three years. Now, if the aforesaid amendment application filed by the first respondent/plaintiff is allowed, then it will take away the right of the revision petitioner/third defendant.

7. The learned counsel for the petitioner further placed a reliance on the following judgments:

(i) In the judgment reported in Chinnu Padayachi and Another V. Dhanalakshmi and Others, 2011 (6) CTC 477, this Court has held that the amendment of plaint, relief of mandatory injunction sought to be filed on 09.07.2010, when, the suit was filed for declaration of title and permanent injunction on 26.04.2005. The application was filed after an inordinate delay of five years and it was held that the prayer for mandatory injunction, is clearly barred by limitation and if prayer for mandatory injunction is permitted, it would prejudice defendant and cause grave injustice to them and



the order allowing the application was set aside and the Civil Revision Petition Stands allowed.

WEB COPY

In the judgment reported in Usha Balasaheb Swami V. Kiran Appaso Swami, 2007 (5) SCC 602, the Hon'ble Apex Court has held that if the amendment do not result in causing grave injustice and irretrievable prejudice to the Plaintiff in the Suit, displacing him completely, the same can be allowed. In the given case on hand, as stated already, the proposed amendment will cause prejudice to the other side, since the other side may not be in a position to raise a plea of limitation, at the final point of time.

In the judgment reported in S.Sathish V. Dr.Sumathi, 2010 (7) MLJ 432, this Court has held that if the amendment does not cause prejudice to other parties, the same can be allowed.

(ii) This Court in the judgment reported in S.Manoharan V. Karunamurthy, 2013 (6) CTC 801 has held when, the suit for specific performance was dismissed in the year 2007 but the application seeking alternative relief of refund of advance amount, filed in 2012, which is five years from the date of dismissal of suit. The application was not filed within three years from the date of dismissal of suit, the relief sought in the amendment application barred by limitation.



(iii) In the judgment reported in L.C.Hanumanthappa V. H.B.Shivakumar, 2015 (6) CTC, the Hon'ble Apex Court has held that suit for declaration of title whether the amendment of the plaint was sought after the period of three years from the date of filing the written statement by the defendants is barred by the limitation and the time starts running from the date on which the written statement disputing the title of the plaint was filed.

8. Per contra, the learned counsel appearing for the first respondent/plaintiff submitted that in the affidavit filed in support of the I.A.No.892 of 2014 in O.S.NO.556 of 2008, she has stated that during the pendency of the above proceedings, the revision petitioner/third defendant trespassed forcibly into the suit schedule property and put up an unauthorized hallow-block construction. Though, the suit has been filed for the relief of permanent injunction against the defendants but the third defendant trespassed into the suit property and put up an unauthorized hallow-block construction measuring about 400 sq.ft., illegally. Therefore, the plaint has to be amended with a prayer for delivery of possession and demolition of the building portion.



9. Heard Mr.P.Valliappan, learned counsel for the petitioner and Mr.P.Saravana Sowmiyan, learned counsel appearing for the first respondent and perused the material documents available on record.

10. On careful perusal of the records, it is clear and evident that the suit was filed in the year 2008. Subsequently, the 2 & 3 respondents/1 & 2 defendants as well as the revision petitioner/third defendant have filed their written statements on 04.11.2008 and 06.11.2008 respectively. In the written statement filed by the revision petitioner/third defendant, he has clearly stated that he has purchased a suit schedule property on 27.07.2007 under document No.4804 of 2007 from the third respondent/second defendant. Subsequently, the first respondent/plaintiff filed an Interlocutory Application in I.A.No.892 of 2014 for amending the plaint in the year 2014 and for the same, the revision petitioner/third defendant filed a counter statement in I.A.No.892 of 2014, stating that the first respondent/plaintiff has disposed off the suit schedule property much prior to this suit and further stated that the first respondent/plaintiff was aware of the existence of the building, the details of the building approval and other particulars, while filing of the suit in the year 2008.



WEB COPY

11. It is clear that the application for amendment was filed after an inordinate delay of six years but no sufficient, valid or genuine reasons has been adduced by the first respondent/plaintiff. Moreover, the first respondent/plaintiff has not come forward to file an application seeking for amending the plaint much earlier, despite knowing the fact that the revision petitioner/third defendant has constructed a house in the suit schedule property, which has also mentioned in the written statement filed by the revision petitioner/third defendant in the year 2008 itself.

12. It is pertinent to note that as per Article 58 of the schedule of the Limitation Act, 1963, the limitation for filing the suit for declaration is three years. In this case, the suit was filed in the year 2008 and the period of limitation was over by 2011. Further, an application for amendment was filed in the year 2014, which is after a lapse of six years from the date of filing the suit. Moreover, as per Section 3 and Article 113 of the schedule of the Limitation Act, 1963, the limitation period for amending the prayer for declaration is three years and in this suit, the trial has also been commenced and if the amendment application is entertained, it will take away the right of



the revision petitioner/third defendant.

WEB COPY

13. It is a well settled law that the pleadings cannot be amended after the commencement of the trial. It is pertinent to extract Order VI Rule 17 of C.P.C hereinbelow:

"17. Amendment of pleadings - The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial."

From a careful reading of the above provision, it is seen that no application for amendment shall be allowed after the trial has commenced.

14. The reason adduced by the first respondent/plaintiff in the Application No.892 of 2014 is that during the pendency of the suit proceedings, the revision petitioner/third defendant has trespassed forcibly into the suit schedule property and put up an unauthorized hallow-block



construction and the same cannot be accepted by this Court for the reason that the revision petitioner/third defendant in his written statement dated 06.11.2008 has categorically stated that he has purchased the property from the third respondent/second defendant in the year 2007 by way of sale deed dated 27.07.2007 vide document No.4804 of 2007. This being so, the contention of the first respondent/plaintiff cannot be accepted and the same is untenable and unsustainable in law.

15. It is crystal clear and evident that first respondent/plaintiff has failed to satisfy the condition stipulated in the proviso to Order VI Rule 17 of C.P.C and the application for amending the pleadings was filed after a lapse of six years is only to protract the proceedings and nothing else. Moreover, it is clear that the revision petitioner/third defendant has constructed the building prior to filing of the suit in the year 2007 and the same is also accessed to property tax and for this reason, the filing of the application of amending the plaint is unwarranted.

Hence, for the foregoing reasons, the order passed by the trial Court is liable to be set aside.



WEB COPY

16. In the result, this Civil Revision Petition is allowed and the fair and decretal order passed by the learned III Additional District Munsif Court, Coimbatore in I.A.No.892 of 2014 in O.S.No.556 of 2008 dated 06.03.2015 is hereby set aside. No costs. Consequently, connected C.M.P.No.8423 of 2016 is closed.

11.04.2022

vm

Index : Yes/No

Speaking Order/Non-Speaking Order



WEB COPY

C.R.P(PD)No.1557 of 2017



To:

The III Additional District Munsif Court,
Coimbatore.



WEB COPY

C.R.P(PD)No.1557 of 2016



J.SATHYA NARAYANA PRASAD,J.

vm

Pre Delivery Order in
C.R.P(PD)No.1557 of 2016



WEB COPY



C.R.P(PD)No.1557 of 2022

11.04.2022