



C.R.P.(MD)No.2174 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 11.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

C.R.P.(MD)No.2174 of 2018

and

C.R.P.(MD)No.9667 of 2018

1.Athimoolam

2.Narayanan

3.Raju ... Petitioners/Respondents 1 to 3 /Defendants 1to3

Vs.

1.M.Sevarkodi Balamurugan

2.M.Gopalakrishnan

3.M.Ayyanraj

4.Anandi

5.Muthumeena ... Respondents 1 to 5 / Petitioners/
Plaintiff

6.Muthuchamy

7.The Joint Sub Registrar No.1,

South Agraharam

Periyakulam Town,

Theni District. ... Respondents 6&7/Respondents 4 &5 /
Defendants 4&5



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Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, against the order and decretal order, dated 05.12.2017, made in I.A.No.134 of 2017, in O.S.No.166 of 2012, on the file of the District Munsif Court, Periyakulam.

For Petitioners : Mr.V.Janakiramulu

For Respondents : Mr.Suriyanarayanan for R1 to R5

: No appearance for R6

: N.Senthil Ayyanar
Government Advocate for R7

ORDER

The instant Civil Revision Petition has been filed against the order, dated 05.12.2017, made in I.A.No.134 of 2017, in O.S.No.166 of 2012, on the file of the District Munsif Court, Periyakulam.

2. The revision petitioners herein are the respondents 1 to 3 / defendants 1 to 3. The respondents 1 to 5 herein are the petitioners / plaintiffs, and the respondents 6 & 7 herein are the respondents 4 & 5 / defendants 4 & 5 before the Court below.



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3. For the sake of convenience, the parties are referred to according to their litigative status before the Court below.

4. It appears that the plaintiffs have filed the suit for the relief of permanent injunction restraining the defendants not to alienate or encumber the suit property. The said suit was filed on 13.09.2012. Resisting the above said suit, the defendants have filed a written statement on 22.02.2013. In the written statement, the defendants have unequivocally disputed the title of the plaintiffs. In the pleadings, in no uncertain terms stated that the suit property was sold to the defendants by virtue of document, dated 20.12.1991 for Rs.74,000/-.

5. However, it appears that after the period of three years from the date of filing of the written statement, the plaintiffs have moved an application for amendment in I.A.No.134 of 2017. Wherein, the plaintiffs introduced new pleadings in the body of the plaint and also sought for the prayer of declaration, to declare that the unregistered document, dated 20.12.1991, is a result of forgery and will not bind the plaintiffs. Apart from that the prayer, he also wanted consequential



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prayer in respect of the valuation of the suit. The said application was resisted by the defendants on the ground that the very amendment sought for is hit by the principles of limitation.

6. However, the Court below has allowed the application with the finding that, the disputed sale deed is an unregistered sale deed, therefore, to have an effective disposal, the amendment sought for by the plaintiffs needs to be allowed.

7. Aggrieved with the said order, the defendants 1 to 3 have approached this Court by way of this Civil Revision Petition.

8. The learned counsel for the defendants 1 to 3 would submit that the very order passed by the Court below is squarely hit by the principles of limitation, and would further submit that since the very prayer is allowed the nature and character of the suit will be changed, therefore, he would submit that the very amendment application is liable to be dismissed, by allowing the Civil Revision Petition.



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9. Per contra, the learned counsel for the respondents would submit that they are not changing the character and nature of the suit and would further submit that the very disputed sale deed is the unregistered sale deed and has recently impounded by the Court, therefore, would submit that the very application is liable to be dismissed and prayed to confirm the order of the Court below.

10. I have given my anxious consideration to the either side submissions.

11. It is an admitted fact that the suit was filed on 13.09.2012. Similarly the written statement was filed on 22.02.2013. In which, a specific pleading has been raised in respect of the sale deed, dated 20.12.1991. Therefore, it is amply clear that the plaintiffs was put on notice about existence of sale deed, dated 20.12.1991 through the written statement. However, the realisation of the plaintiffs to file amendment application in respect of sale deed came little latter. In the meanwhile, three years period have lapsed. After that the amendment application came to be filed on 31.01.2017.



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12. The learned counsel for the plaintiffs would contend that though the application has been filed belatedly, the intervening circumstances such as direction to pay the stamp duty penalty must be a reparative measure to the plaintiff, and that the learned counsel for the plaintiffs would further submit that, the same would save the limitation to file the application for amendment. In substance, it is the submission of the learned counsel for the plaintiffs that they moved an application within a period of 3 years from the date of payment of stamp duty penalty, therefore, would contend that the application is well within the limitation.

13. However, this Court is not persuaded with the submissions made by the learned counsel for the plaintiffs. According to Article 58 of the Limitation Act, the same mandates that the suit should be instituted within a period of 3 years, from the date, when the right to sue first accrues. Therefore, as rightly submitted by the learned counsel for the defendants, the right to sue first accrued to the plaintiffs as early as on 22.02.2013, when they filed a written statement with categorical pleading about the existence of sale deed, dated 20.12.1991.



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14. At this juncture, the learned counsel for the plaintiffs would rely upon the judgment of the Hon'ble Supreme Court reported in ***AIR-1957-SC-357 (L.C.Leach & Co.Ltd V. Jardine Skinner & Co.)*** and ***AIR-1957-SC-363-, 2009-5-LW-510*** and ***2002-7-SCC-559 (Sampath Kumar V. Ayyakannu)*** and would contend that in all those above cases, even after the period of limitation, the Hon'ble Supreme Court has permitted the amendment.

15. This Court has carefully gone through those judgments. The facts of the above referred cases is not applicable to the facts in hand. Because in all those reported judgment the structure and character of the suit was not altered. In the above reported judgment, what they amended is only the nature of relief and not the nature of the suit.

16. But, here in this case, while seeing the amendment, the petitioner wants to add new pleadings in the body of the plaint and thereby, the structure of the suit is attempted to be changed. To put it



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differently the proposed prayer sought for rest up the proposed amendment in the body of the plaint.

17. In this regard, it is appropriate to rely upon the judgment of the Hon'ble Supreme Court reported in **2016-1-SCC-332 (L.C.Hanumanthappa V. H.B.Shivakumar)**. Wherein, this Court in categorical terms held as follows:-

“14. Given this statement of the law, it is clear that the present amendment of the plaint is indeed time-barred in that the right to sue for declaration of title first arose on 16th May, 1990 when in the very first written statement the defendant had pleaded, in para 13 in particular, that the suit for injunction simpliciter is not maintainable in that the plaintiff had failed to establish title with possession over the suit property. The only question that remains to be answered is in relation to the doctrine of relation back insofar as it applies to amendments made under Order VI Rule 17 of the Code of Civil Procedure.”

18. In the above judgment, the Hon'ble Supreme Court held that the doctrine of relation back is not the universal Rule and it depend



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upon the facts and circumstances of the each case. In the said judgment it has been further held that when the nature and character of the suit is affected, the doctrine of relation back could not be applied. As a consequence of amendment application needs to be dismissed.

19. It is pertinent to mention here that, the plaintiffs wanted to amend a prayer in respect of a declaration of sale deed. In this regard, it is appropriate to refer the judgment reported in **2001-6-SCC-163 (Vishwambhar and Ors. V. Laxminarayan (Dead) through L.Rs. and Anr.)**. The relevant portion of the judgment is as follows-

“23. On a fair reading of the plaint, it is clear that the main fulcrum on which the case of the plaintiffs was balanced was that the alienations made by their mother-guardian Laxmibai were void and therefore, liable to be ignored since they were not supported by legal necessity and without permission of the competent court. On that basis the claim was made that the alienations did not affect the interest of the plaintiffs in the suit property. The prayers in the plaint were inter alia to set aside the sale deeds dated 14.11.1967 and 24.10.1974, recover possession of the properties sold from the respective



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purchasers, partition of the properties carving out separate possession of the share from the suit properties of the plaintiffs and deliver the same to them. As noted earlier, the trial court as well as the first appellate court accepted the case of the plaintiffs that the alienations in dispute were not supported by legal necessity. They also held that no prior permission of the court was taken for the said alienations. The question is in such circumstances are the alienations void or voidable? In Section 8(2) of the Hindu Minority and Guardianship Act, 1956, it is laid down, inter alia, that the natural guardian shall not, without previous permission of the Court, transfer by sale any part of the immovable property of the minor. In sub-section (3) of the said section it is specifically provided that any disposal of immovable property by a natural guardian, in contravention of sub-section (2) is voidable at the instance of the minor or any person claiming under him. There is, therefore, little scope for doubt that the alienations made by Laxmibai which are under challenge in the suit were voidable at the instance of the plaintiffs and the plaintiffs were required to get the alienations set aside if they wanted to avoid the transfers and regain the properties from the purchasers. As noted earlier in the plaint as it stood before the amendment the prayer for setting aside the sale deeds was not there, such a prayer appears to have been introduced by amendment during



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hearing of the suit and the trial court considered the amended prayer and decided the suit on that basis. If in law the plaintiffs were required to have the sale deeds set aside before making any claim in respect of the properties sold then a suit without such a prayer was of no avail to the plaintiffs. In all probability realising this difficulty the plaintiffs filed the application for amendment of the plaint seeking to introduce the prayer for setting aside the sale deeds. Unfortunately, the realisation came too late. Concededly, plaintiff no.2 Digamber attained majority on 5th August, 1975 and Vishwambhar, plaintiff no.1 attained majority on 20th July, 1978. Though the suit was filed on 30th November, 1980 the prayer seeking setting aside of the sale deeds was made in December, 1985. Article 60 of the Limitation Act, prescribes a period of three years for setting aside a transfer of property made by the guardian of a ward, by the ward who has attained majority and the period is to be computed from the date when the ward attains majority. Since the limitation started running from the dates when the plaintiffs attained majority the prescribed period had elapsed by the date of presentation of the plaint so far as Digamber is concerned. Therefore, the trial Court rightly dismissed the suit filed by Digamber. The judgment of the trial court dismissing the suit was not challenged by him. Even assuming that as the suit filed by one of the plaintiffs was within time the entire



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suit could not be dismissed on the ground of limitation, in the absence of challenge against the dismissal of the suit filed by Digambar the first appellate court could not have interfered with that part of the decision of the trial court. Regarding the suit filed by Vishwambhar it was filed within the prescribed period of limitation but without the prayer for setting aside the sale deeds. Since the claim for recovery of possession of the properties alienated could not have been made without setting aside the sale deeds the suit as initially filed was not maintainable. By the date the defect was rectified (December, 1985) by introducing such a prayer by amendment of the plaint the prescribed period of limitation for seeking such a relief had elapsed. In the circumstances the amendment of the plaint could not come to the rescue of the plaintiff.

From the averments of the plaint it cannot be said that all the necessary averments for setting aside the sale deeds executed by Laxmibai were contained in the plaint and adding specific prayer for setting aside the sale deeds was a mere formality. As noted earlier, the basis of the suit as it stood before the amendment of the plaint was that the sale transactions made by Laxmibai as guardian of the minors were ab initio void and, therefore, liable to be ignored. By introducing the prayer for setting aside the sale deeds the basis of the suit was



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changed to one seeking setting aside the alienations of the property by the guardian. In such circumstance the suit for setting aside the transfers could be taken to have been filed on the date the amendment of the plaint was allowed”

(Emphasis supplied by this Court)

20. In the above judgment, the Hon'ble Supreme Court after discussing various aspect has repelled the contention of the plaintiffs for an amendment. At this juncture, it is appropriate to refer the Article 58 of the Limitation Act. The mandates 3 years time period from the date when the right to sue accrues to obtain any other declaration.

21. Here, the plaintiffs came to know about the existence of the alleged sale deed, dated 20.12.1991, as early as on 22.02.2013, when the defendants filed the written statement. Hence, their right to challenge accrues firstly when they came to know about the disputed sale deed, on 22.02.2013, when the written statement filed. However, the application for amendment came to be filed only on 31.01.2017, admittedly after the period of limitation. In the meanwhile, the relief become barred by limitation. Hence, this Court is of the view that the order passed by the Court below is liable to be interfered with.



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C.KUMARAPPAN.,J.

Ls

Order made in

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