



C.R.P.No.273 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2024

CORAM

THE HONOURABLE MR. JUSTICE V. SIVAGNANAM

Civil Revision Petition No.273 of 2024
and
Civil Miscellaneous Petition No.1275 of 2024

S. Chandrasekaran ... Petitioner

Vs

1. Kumari Jayachandiran

2. B. Jayachandiran ... Respondents

Prayer: Civil Revision Petition has been filed under Article 227 of the Constitution of India to set-aside the fair and decreetal order dated 22.08.2023 made in I.A.No.1 of 2019 in O.S.No.283 of 2014 on the file of the Principal District Court, Chengalpattu, by allowing the Civil Revision Petition.

For Petitioner : Mrs. Rebecca Vasanthini Percy

For Respondents : Mr C. Jagadish,



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ORDER

This Civil Revision Petition has been filed to set-aside the fair and decreetal order passed by the Principal District Court, Chengalpettu on 22.08.2023 in I.A.No.1 of 2019 in O.S.No.283 of 2014.

2. The petitioner/plaintiff had filed a suit in O.S.No.283 of 2014, against the respondents/defendants for permanent injunction restraining the defendants, their men, agents or any other persons claiming under them from interfering or encroaching, dealing, dispossessing and disturbing the plaintiff's peaceful possession and enjoyment of the suit property and for a declaration declaring the sale agreement and power of attorney executed by plaintiff in favour of the defendants as null and void, and also for a declaration declaring the sale deed dated 04.10.2012 executed by the first defendant in favour of the second defendant as null and void. Pending suit, the petitioner/plaintiff had filed an application in I.A.No.1 of 2019 under Order VI Rule 17 and Section 151 CPC, to amend the plaint. The Trial Court, after considering the



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contentions of the counsels on both sides, by an order dated 22.08.2023 dismissed the same. Aggrieved over the same, the present revision has been filed by the petitioner/plaintiff.

3. The learned counsel for the petitioner submitted that the amendment has to be allowed to avoid further litigation and generally, amendment has to be allowed to decide the issue between the parties. The period of limitation is a mixed question of fact and law and it has to be decided as a subject matter of an issue at the time of trial, and hence, on the ground of limitation it cannot be rejected. To support his argument, the learned counsel relied upon the judgment of the Hon'ble Supreme Court reported in **2001(2) SCC 472 (Raghu Thilak D. John /vs/ S. Rayappan and others and 2011(3) MWN (Civil) 707 (P.Mallika & others /vs/ D.K.Sriramulu (deceased, Vanaja & others).**

4. The learned counsel for the respondent supported the impugned order and further contended that he had filed the written statement in the suit on 07.11.2015. In the written statement, in paragraph no.11, he had specifically stated that the plaintiff being a party to the sale deed dated 04.10.2012, cannot



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seek for declaration declaring that the abovesaid sale deed is null and void and therefore, the suit is not maintainable. Inspite of the specific defence raised by the respondents, the petitioner has not taken any steps for amendment earlier. Apart from this, the petitioner being a party to the sale deed dated 04.10.2012 and hence, in view of Section 59 of the Limitation Act, the limitation period is started from the date of registration. Since the sale deed was registered on 04.10.2012, the petition for amendment is time barred and therefore, the relief cannot be granted by the Court on the point of limitation in view of Article 59 of Limitation Act. To support his argument, he relied upon the judgment of this Court in **2005 CTC 619 (Rameeza Beevi and others /vs/ S.Mohammed Ibrahim), 1996(7) SCC 486 (Radhika Devi /vs/ Bajrangi Singh and others), 2021 SCC Online Madras 16661 (P.Mariappan /vs/ P.Mohankumar) .** The learned counsel also relied upon the following observation of this Court :-

15. The Hon'ble Supreme Court of India and this Court held that the Court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application. Further allowing the amendment



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would not only have effect of plaintiff getting rid of admission made in the original plaintiff but defeating provision of Order 12 Rule 6 of CPC, such amendment changing the entire character of plaint cannot be permitted, that too after the lapse of reasonable years after institution of the suit.

.....17. Therefore, the petitioner had knowledge about the sale deed dated 11.04.2002, even at the time of filing the suit viz., 15.02.2012. Further it is also brought to his knowledge by the respondent herein in his written statement dated 25.06.2012. The sale deed is of the year 2002 and it is duly registered one. Though the petitioner stated that the respondent created forged and fabricated document in his favour in respect of the suit property, the petitioner did not choose to challenge the said sale deed dated 11.04.2022. Even after filing the written statement, the petitioner failed to amend the prayer to include the prayer of declaration in respect of the sale deed dated 11.04.2002.

.....20. Accordingly, the present petition for amendment of the plaint is time barred. The right to sue for declaration of the first arose even on the date of plaint viz., 15.02.2012. Thereafter, the respondent filed written statement on 25.06.2012 and specifically pleaded that the



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petitioner executed sale deed in respect of his half share by the registered sale deed dated 11.04.2002 and sought for recovery of possession. Even then the petitioner failed to challenge the sale deed dated 11.04.2022 and also failed to file reply statement in time. Therefore, the amendment sought for by the petitioner is squarely barred by limitation and it cannot be permitted.

21. It is also clear the amendment sought for by the petitioner reflects his after thought and the petitioner ought to have asked for at the time of filing the suit itself.

and thus, seeks to dismiss the revision.

7. I have considered the matter in the light of the submissions made by the learned counsel on both sides and perused the materials available on records carefully.

8. On perusal of materials, it is noticed that the petitioner/plaintiff had filed a suit in O.S.No.283 of 2014 before the Principal District Court, Chengalpattu, against the respondents/defendants for permanent injunction



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and for declaration declaring the sale agreement and power of attorney executed by plaintiff in favour of the defendants as null and void, and also for a declaration declaring the sale deed dated 04.10.2012 executed by the first defendant in favour of the second defendant as null and void. Pending suit, the petitioner/plaintiff had filed an application in I.A.No.1 of 2019 under Order VI Rule 17 and Section 151 CPC, to amend the plaint and the same was dismissed by the Trial Court on 22.08.2023, against which, the present revision has been filed by the petitioner/plaintiff.

9. Further, it is noticed that the petitioner had filed the suit on 03.11.2014 and the written statement is filed on 07.11.2015. In the written statement, in paragraph 11, the defendant had specifically raised the defence that the petitioner being a party to the document, he cannot seek for declaration of the document as null and void and he has to seek for cancellation of the document. Admittedly, for cancellation of any document, the limitation in view of Article 59 of the limitation act is 3 years. So, the period of limitation of 3 years was passed. Even the amendment is allowed



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liberally within that period, of therefore, the relief cannot be granted by the Court being barred by limitation. In the judgment relied on by the learned counsel for the petitioner in 2001 SCC 472, the suit was originally filed for permanent injunction. Thereafter, during the pendency of that suit, since the defendant in that case entered into the plaintiff's house unauthorisedly and demolished the compound wall, they sought to amend the plaint claiming recovery of damages and that was allowed. The another case referred by the respondent reported in 1996 (7) SCC 486 is with regard to execution of gift deed and pending suit amendments are declared that the gift deed was obtained by illegal and fraudulently. So, the fact involved in that case is also totally different. In this case, for cancellation of deed executed by the petitioner/plaintiff, the limitation as per Article 59 of Limitation Act is attracted. Therefore, the Trial Court had rightly dismissed the amendment petition as the prayer cannot be entertained. Hence, I find no reason to interfere with the impugned order and there is no merit in this revision and the same is liable to be dismissed.



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10. Accordingly, this Civil Revision Petition is dismissed . No costs.

Consequently, connected miscellaneous petition is closed.

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Index: yes/no
Internet:yes/no
mrp

To
XXII Assistant Judge,
XXII Assistant City Civil Court,
Chennai.



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V. SIVAGNANAM, J.

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