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C.R.P.No.203 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CRP.No.203 of 2019 and
C.M.P.No.1633 of 2019

1.B.Rajaram
2.B.Kuppusamy
3.B.Sakunthala

... Petitioners

Vs.

1.N.Perimalsamy (Died)
2.The India Cements Educational Society Limited
“Dhun Buildings”
827, Anna Salai, Chennai-600 002,
Authorised Signatory
T.S.Raghupathy

3.Arihant Uni Tech Realty Projects Limited
6, Community Centre, Saket,
New Delhi-110 017, by its Director
Vimal Lunawath

4.The Tahsildar
Thiruporur Taluk
Thiruporur



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5.The District Collector
Kancheepuram District
Office of the Collectorate
Kancheepuram

6.Mrs.Bharathi

7.Nandakumar

(R1-died Respondents 6 &7

are impleaded as LR's of the deceased

R1 viz., N.Perimalsamy vide court order

dated 04.10.2023 made in CMP.No.14303/2021

in CRP.No.203/2019)

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, against the order and decretal order in I.A.No.780 of 2016 in O.S.No.72 of 2013 on the file of District Munsif, Chengalpattu dated 01.09.2018.

For Petitioners	: M/s.V.Raghavachari Senior Counsel for M/s.V.Srimathi
For Respondent 1	: Died
For respondent 2	: No appearance
For respondent 3	:M/S.G.Vivekanand
For Respondent 4 &5	:Mr. V.Jeeva Giridharan Additional Govt. Pleader
For Respondent 6 & 7	: Mr.S.Sukumar



ORDER

The Civil Revision Petition is filed challenging the order passed by the Court below dismissing the petition seeking amendment of the plaint.

2. The petitioners/plaintiffs filed a suit seeking declaration that Power of Attorney dated 23.11.2000 allegedly executed by one Purushothaman Naidu in favour of deceased 1st respondent/1st defendant was null and void and consequently also sought for a declaration that subsequent sale deeds dated 24.11.2000 and 24.04.2006 were also null and void. The petitioners also sought for permanent injunction restraining the respondents 4 and 5 from making any changes in the revenue records in the name of respondents 1 to 3. The petitioner also sought for injunction restraining respondents 1 to 3 from interfering with petitioners' peaceful possession and enjoyment of the suit property.

3. The petitioners filed an amendment application seeking amendment of the plaint to correct the typographical error in respect of date of death of Purushothaman Naidu and also to include a new prayer for declaration of title



and recovery of possession. In the valuation column, they also sought for consequential amendment so as to suit the new prayer sought for. The said amendment application filed by the petitioners was dismissed by the Court below on the ground that the title of the petitioners were objected to by the respondents even in the pre-suit reply notice dated 28.02.2013 and 07.03.2013 and therefore, the present petition for amendment filed on 22.06.2016 was beyond the limitation period of three years under Section 58 of Limitation Act. The Court below also dismissed the amendment application on the ground that the plaint does not disclose any cause of action regarding the proposed prayer for delivery of possession. Aggrieved by the same, the petitioners are before this Court.

4. The learned Senior Counsel appearing for the petitioners submitted that the petitioners seek declaration of title and recovery of possession in respect of immovable property and therefore, the proper Article which covers the proposed new prayer is Article 65 of the Limitation Act and not Article 58 as observed by the Trial Court. Therefore, it is the submission of the learned Senior Counsel that limitation should be 12 years for filing the suit seeking the



relief of declaration and injunction not three years as observed by the Court below. The learned counsel further submitted that in the affidavit filed in support of amendment application, it was clearly averred by the petitioners that 3rd respondent got mutation of revenue records in his favour on the strength of the sale deeds impugned in the plaint and therefore, it necessitated the petitioners to seek the relief of possession. The learned counsel further submitted that amendment with regard to the date of death of Purushothaman Naidu is only due to the accidental slip namely typographical error and consequently, the Court should be liberal in allowing the same.

5. Per contra, the learned counsel for the contesting 3rd defendant submitted that vendor of the 3rd defendant namely 2nd defendant purchased the suit property under sale deed dated 24.11.2000 from the 1st defendant. Therefore, limitation for prayer for possession shall be calculated from that date and if the limitation is calculated from that date, the proposed prayer is hopelessly barred by limitation. The learned counsel further submitted that petitioners in the averments made in support of the proposed amendment had not mentioned when the defendants came into possession of the suit property



and therefore, the prayer for possession is not maintainable. The learned counsel further submitted that in any event, the amendment shall take effect only from the date of filing of the amendment application and it should not relate back to the date of filing of plaint. In support of his contentions, the learned counsel relied on the following judgments:-

- 1) ***L.C.Hanumanthappa (Since dead) represented by his legal representatives Vs H.B.Shivakumar*** reported in ***(2016) 1 SCC 332***
- 2) ***Revajeetu Builders and Developers Vs Narayanaswamy and sons and others*** reported in ***(2009) 10 SCC 84.***

6. The prayer sought for by the petitioners in the plaint is to declare the alleged power deed dated 23.11.2000 executed by one Purushothaman Naidu in favour of deceased 1st respondent/1st defendant. In the averments filed in support of the amendment application, it was stated by the petitioners that the correct date of death of Purushothaman Naidu was 23.02.1934 and not 24.02.1934 as mentioned in the plaint. Terming the same as a typographical error, the petitioners seek amendment of the date of death of Purushothaman Naidu.



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7. A perusal of the typed set of papers would indicate that the present amendment application has been filed by the petitioners before commencement of the trial and it is settled law that Court should be liberty in allowing the pre-trial amendments that too when the amendment is regarding the typographical error that had crept in at the time of preparing the pleadings. Therefore, the amendment regarding the date of death of Purushothaman Naidu is liable to be allowed.

8. The Court below mainly dismissed the amendment application on the ground of limitation and absence of cause of action for relief of delivery of possession. By relying on the judgment of the Hon'ble Apex Court in the L.C.Hanumanthappa case cited supra, the learned counsel for the respondent contended that the limitation for seeking declaratory relief is three years from the date of knowledge about the denial of the title by the defendant.



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9. It is true that two member bench of the Hon'ble Apex Court in (2009) **10 SCC 84** held that limitation for seeking declaratory relief under Article 58 of Limitation Act is only three years from the date when the right accrues. However, the said judgment was referred to and clarified by subsequent three member bench of the Hon'ble Apex Court in the case of **Sopanrao and Another Vs Syed Mehmood and Others** reported in (2019) **7 SCC 76**. The relevant observation of the Hon'ble Apex Court reads as follows:-

“9. *The limitation for filing a suit for possession on the basis of title is 12 years and, therefore, the suit is within limitation. Merely because one of the reliefs sought is of declaration that will not mean that the outer limitation of 12 years is lost. Reliance placed by the learned counsel for the appellants on the judgment of this Court in L.C. Hanumanthappa v. H.B. Shivakumar I is wholly misplaced. That judgment has no applicability since that case was admittedly only a suit for declaration and not a suit for both declaration and possession. In a suit filed for possession based on title the plaintiff is bound to prove his title and pray for a declaration that*



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he is the owner of the suit land because his suit on the basis of title cannot succeed unless he is held to have some title over the land. However, the main relief is of possession and, therefore, the suit will be governed by Article 65 of the Limitation Act, 1963. This Article deals with a suit for possession of immovable property or any interest therein based on title and the limitation is 12 years from the date when possession of the land becomes adverse to the plaintiff. In the instant case, even if the case of the defendants is taken at the highest, the possession of the defendants became adverse to the plaintiffs only on 19.08.1978 when possession was handed over to the defendants. Therefore, there is no merit in this contention of the appellants”.

10. The Apex Court in Sopanroa case cited supra, after referring to the L.C.Hanumanthappa case clarified that when relief of declaration and recovery of possession sought for in respect of immovable property, the correct Article to be applied is Article 65 of the Limitation Act. The Article 65 of Limitation Act reads as follows:-



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Description of suit	Period of limitation	Time from which period begins to run
65. For possession of immovable property or any interest therein based on title. <i>Explanation:-</i> For the purposes of this article (a) where the suit is by a remainderman, a reversioner (other than a landlord) or a devisee, the possession of the defendant shall be deemed to become adverse only when the estate of the remainderman, reversioner or devisee, as the case may be, falls into possession; (b) where the suit is by a Hindu or Muslim entitled to the possession of immovable property on the death of a Hindu or Muslim female, the possession of the defendant shall be deemed to become adverse only when the female dies; (c) where the suit is by a purchaser at a sale in execution of a decree when the judgment-debtor was out of possession at the date of the sale, the purchaser shall be deemed to be a representative of the judgment-debtor who was out of possession.	Twelve years	When the possession of the defendant becomes adverse to the plaintiff.

11. Therefore, the limitation for seeking recovery of possession in respect of immovable property is 12 years from the date on which the



possession of the defendant turns hostile to that of the plaintiff. When relief of declaration is sought for along with consequential prayer of recovery of possession in respect of immovable property, as held in **2019 7 SCC 76**, the limitation period is 12 years from the date on which the possession of the defendant turns hostile to that of the plaintiff.

12. The learned counsel for the respondent submitted that sale deed in favour of 2nd defendant by 1st defendant was registered in the year 2000. Therefore, the limitation for proposed prayer for declaration and recovery of possession had started even in the year 2000. Therefore, the prayer is barred by limitation.

13. Hostile possession means possession with necessary *animus* to exclude the real owner and such possession shall be explicit and to the knowledge of real owner. What was the date on which, the petitioner acquired knowledge about the hostile possession of the defendant is the matter of evidence and the same has to be gone into at the time of trial. Therefore, the prayer sought for by the petitioners cannot be shut down at the threshold.



Hence, the dismissal of the amendment application on the ground of limitation by the Court below by applying Article 58 of Limitation Act is contrary to the law laid down by the Hon'ble Apex Court in the case of ***Sopanrao and Another Vs Syed Mehmood and Others*** reported in ***(2019) 7 SCC 76***.

14. Though the petitioners originally filed a suit asserting the possession over the suit property, in the affidavit filed in support of application for amendment, it was averred by the petitioners that 3rd respondent, with an intention to complicate the issue, mutated the revenue records in his favour on the strength of the impugned sale deed executed in his favour by the 2nd defendant and therefore, the petitioners were constrained to include the prayer for possession. An entry in revenue records is treated as evidence of possession. According to the petitioners, when 3rd respondent mutated the revenue records in his favour, it will complicate the issue regarding actual possession. Hence, petitioners want to include prayer for possession. Therefore, the petitioners had made out a case for allowing the amendment application. In the facts and circumstances of the case, this Court feels that proposed amendments are absolutely necessary to adjudicate the real



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controversies between the parties in a more comprehensive way and the proposed amendment will also prevent the multiplicity of proceedings. Therefore, the reasoning given by the Court below for dismissing the application are not acceptable to this Court. Accordingly, the Civil Revision Petition stands allowed by setting aside the dismissal of the amendment application by the Court below.

15. It is made clear that the respondents herein are entitled to file additional written statement raising all their defences against the proposed prayers sought to be introduced by the petitioners by way of amendment including limitation.

16. With these clarification, the Civil Revision Petition stands allowed. Consequently, connected miscellaneous petition is closed. No costs.

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S.SOUNTHAR, J.

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To

The learned District Munsif, Chengalpattu

Pre-delivery Order made in
CRP.No.203 of 2019
and
C.M.P.No.1633 of 2019

30.01.2024.