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C.R.P(MD)No.1459 of 2



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On: 05.07.2024
Pronounced On:07.2024

CORAM

**THE HONOURABLE MR JUSTICE D.BHARATHA
CHAKRAVARTHY**

**C.R.P(MD)No.1459 of 2024
and
C.M.P(MD)No.8604 of 2024**

Meera Rengasamy

... Plaintiff/Petitioner/
Revision Petitioner

Vs.

R.Vijayaraman Dharmaraj(Died)

1.V.Kowsikan
2.Mrs.Vasanth
3.Ms.Kavitha
4.Ms.Geetha
5.Ms.Ramya

...Defendants/
Respondents/Respondents

Civil Revision Petition is filed under article 227 of the Constitution of India, to set aside the order dated 19.09.2023 passed by the Subordinate Judge, Lalgudi, in I.A.No.4 of 2021 in O.S.No.151 of 2019.

For Petitioner
For Respondents

:Mr.Krishna Srinivasan
:No appearance

**ORDER**

This Civil Revision Petition is filed to set aside the order dated 19.09.2023 passed by learned Subordinate Judge, Lalgudi, in IA.No.4 of 2021 in O.SNo.51 of 2019.

2.In the said interlocutory application, the petitioner/plaintiff had prayed for amending the plaint. The suit is filed for specific performance. Even in the plaint, it is mentioned that when the agreement is in force, high-handedly, the vendor had executed a settlement in favour of his son and the particulars of the settlement deed also are mentioned in the plaint itself. The suit agreement was dated 26.05.1997. The settlement deed was executed on 25.03.2009. The suit for specific performance was filed on 15.01.2011. Whiles, the present I.A.No.4 of 2021 was filed in the year 2021, with a prayer to amend the relief so as to include the relief of declaring the settlement deed as null and void. There were also other formal amendments regarding correction of mistake, etc. The trial Court, while allowing the other formal amendments, declined the prayer to amend the relief. The trial Court held that as far as the relief of declaration is concerned, the same is barred by limitation and dismissed the amendment petition in that regard.



3.Heard Mr. Krishna Srinivasan, the learned Senior Counsel appearing on behalf of the petitioner.

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4.The learned Senior Counsel appearing on behalf of the petitioner would submit that it is now settled law that the Courts cannot consider the point of limitation while considering the amendment and the amendment has to be allowed and the party should be left to defend the relief on merits when the case is taken up for trial. The learned Senior Counsel would rely upon the judgment of the Hon'ble Supreme Court in ***Pankaja & Anr-vs-Yellappa (D) By Lrs. & Ors***, reported in (2004)6 SCC 415.

5.I have considered the said submissions made by the Leonard Senior Counsel and perused the material records on the case.

6.Firstly, this Court takes into account that the suit is filed for specific performance, the same is to enforce the agreement, dated 24.05.1997. The suit was filed in the year 2011 and even in the said suit, in paragraph No.6 of the plaint, the plaintiff had stated as follows.

“.....The said settlement deed has been brought into existence by the defendants interse with some oblique motive, to cheat, defeat and defraud the genuine claim of the plaintiff for specific performance since there is steep



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increase in the value of the suit property. The alleged settlement deed dated 25.03.2009 is not binding on the plaintiff and it will only be subject to the right of the plaintiff for specific performance.....”

7.In that backdrop, the plaintiff had not chosen to seek a relief of declaration in respect of the settlement deed. When the suit itself was filed after a lapse of almost 14 years, now, after a lapse of another 10 years after the filing of the suit in the year 2021, the present application for amendment of relief is filed. Even in the present application, in the affidavit filed in support of the application, the plaintiff has stated as follows:

“4.....I also understand that should the relief of specific performance be granted by this Hon'ble Court then this would invariably mean that the settlement deed dated 25.03.2009 is illegal.....”

8.In the teeth of the said averments, while the plaintiff's original case is that the settlement deed is null and void and he has not chosen to pray a declaration and when the very same stand is also now taken in the affidavit filed in support of the amendment application, then the amendment itself becomes redundant. Secondly, as far as the reasoning given by the trial Court regarding the period of limitation is concerned, I reject the



submissions made by the learned Senior Counsel that the Court cannot look into the period of limitation. It is essential to quote the judgment cited by the learned Senior Counsel in ***Pankaja and another case(cited supra)***.

More specifically, paragraph Nos.12 to 18 are extracted hereunder:

“12.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.

13.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?

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 in a judicious evaluation of the facts and circumstances in which the amendment is sought. If the granting



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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.

15.This Court in the case of L.J. Leach and Co. Ltd. & Anr. Vs. Messrs. Jardine Skinner and Co. - A.I.R. 1957 S.C. 357 has held :-

"It is no doubt true that Courts would, as a rule, decline to allow amendments, if a fresh suit on the amended claim would be barred by limitation on the date of the application. But that is a factor to be taken into account in exercise of the discretion as to whether amendment should be ordered, and does not affect the power of the Court to order it, if that is required in the interests of justice."

16.This view of this Court has, since, been followed by a 3 Judge Bench of this Court in the case of T.N. Alloy Foundry Co. Ltd. Vs. T.N. Electricity Board & Ors. 2004 (3) SCC 392. Therefore, an application for amendment of the pleading should not be disallowed merely because it is opposed on the ground that the same is barred by limitation, on the contrary, application will have to be considered bearing in mind the discretion that is vested with the Court in allowing or disallowing such amendment in the interest of justice.

17.Factually in this case, in regard to the stand of the defendant that the declaration sought by the appellants is barred by limitation, there is dispute and it is not an admitted fact. While the learned counsel for the defendant-respondents pleaded



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that under Entry 58 of the Schedule to the Limitation Act, the declaration sought for by the appellants in this case ought to have been done within 3 years when the right to sue first accrued, the appellant-plaintiff contends that the same does not fall under the said Entry but falls under Entry 64 or 65 of the said Schedule of the Limitation Act which provides for a limitation of 12 years, therefore, according to them the prayer for declaration of title is not barred by limitation, therefore, both the courts below have seriously erred in not considering this question before rejecting the prayer for amendment. In such a situation where there is a dispute as to the bar of limitation this Court in the case of Ragu Thilak D. John Vs. S. Rayappan & Ors. 2001(2) SCC 472 (supra) has held :-

"The amendment sought could not be declined. The dominant purpose of allowing the amendment is to minimise the litigation. The plea that the relief sought by way of amendment was barred by time is arguable in the circumstances of the case. The plea of limitation being disputed could be made a subject-matter of the issue after allowing the amendment prayed for."

18. We think that the course adopted by this Court in Ragu Thilak D. John's case (supra) applies appropriately to the facts of this case. The courts below have proceeded on an assumption that the amendments sought for by the appellants is ipso facto barred by the law of limitation and amounts to introduction of different relief than what the plaintiff had asked for in the original plaint. We do not agree with the courts below that the amendments sought for by the plaintiff introduces a different relief so as to bar the grant of prayer for amendment, necessary



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factual basis has already been laid down in the plaint in regard to the title which, of course, was denied by the respondent in his written statement which will be an issue to be decided in a trial. Therefore, in the facts of this case, it will be incorrect to come to the conclusion that by the amendment the plaintiff will be introducing a different relief.”

9. Therefore, on perusal of the same, it will be cleared that certainly the Court should exercise the power of discretion by taking into account as to whether the claim made in the amendment is barred by limitation or not. If only there are rival claims as to the period of limitation applicable or if the limitation is a mixed question of fact and law to be considered at the time of trial, then at the stage of allowing the amendment as enunciated in *Raghu Tilak's case*, the Court need not reject the amendment application at the threshold. In the instant case, there is no dispute as to the period of limitation applicable. It is not the pleading of the plaintiff that there is any mixed question of fact and law with reference to the calculation of the period.

10. As extracted above, the knowledge of the plaintiff certainly dates back to the suit itself, as the settlement deed is mentioned in the plaint itself. Thus, in the instant case, amendment cannot be permitted after the period of



limitation. Therefore subject to the above observations made, the Civil Revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is also closed.

.07.2024

NCC:Yes/No

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To

- 1.The Subordinate Judge,
Lalgudi,
- 2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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D.BHARATHA CHAKRAVARTHY, J.

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