



C.R.P.(MD)No.1274 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 05.02.2024

PRONOUNCED ON:27.03.2024

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)No.1274 of 2019

and

C.M.P.(MD)No.7037 of 2019

1.Murugan
2.Bhavani
3.Panchavarnam
4.Chandrakumar
5.Saravanan

: Revision Petitioners/
Respondents 1, 4 to 7/Defendants
1, 4 to 7

Vs.

1.Meenakshi
2.Umarani
3.Ramadevi
4.Kavita
5.Karthik

: Respondents/Petitioners/Plaintiffs

Markandan(died)

6.Pranakaran

: Respondent/3rd Respondent/
3rd defendant



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PRAYER:- Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair order and judgment dated 24.04.2019 in I.A.No.560 of 2018 in O.S.No.618 of 2010, on the file of the learned Additional District Munsif Court, Thirumangalam.

For Petitioners : Mr.B.Sekar

For Respondents : Mr.J.Barathan
for R.1 to R.5
: R.6 – memo filed

ORDER

The Civil Revision Petition is directed against the order passed in I.A.No.560 of 2018 in O.S.No.618 of 2010, dated 24.04.2019, on the file of the District Munsif Court, Thirumangalam, allowing the petition filed under Order 6 Rule 17 C.P.C.

2. The revision petitioners are the defendants 1, 4 to 7. The respondents 1 to 5, as plaintiffs have filed the above suit against the revision petitioners and the sixth respondent to declare that the first item



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of the suit property belong to the plaintiffs and for consequential permanent injunction restraining the defendants and their men from any way interfering with the plaintiffs' peaceful possession and enjoyment of the vacant portion of I Item of the property and for directions to the defendants to vacate and hand over the vacant possession of II and III items of the suit property, after removing the superstructure without any let or hindrance within the period stipulated by the Court.

3. The defendants have filed their written statement and are contesting the suit. Pending trial, the plaintiffs have filed the above application seeking permission to amend the plaint as detailed in the petition. The respondents have filed a counter statement raising objections. The learned District Munsif, after enquiry, has passed the impugned order permitting the proposed amendment. Aggrieved by the impugned order, the defendants 1, 4 to 7 have preferred the present revision.

4. It is not in dispute that pending suit, the second defendant had died and his legal representatives were impleaded as defendants 5 to 7. It is also not in dispute that one Periya Chellaiah – husband of the first



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plaintiff and the father of the other plaintiffs have entered into a partition with his brothers on 09.05.1975, that in the said partition, the suit property measuring 11 5/8 cents was allotted to the said Periya Chellaiah. Admitting the partition and allotment of the suit property to the share of Periya Chellaiah, the defendants have taken a stand that on 20.12.1987, the said Periya Chellaiah and his brother Chinna Chellaiah exchanged their respective properties through an unregistered exchange deed and as per the said exchange, the said Chinna Chellaiah has become the owner of the suit property and on that basis, Chinna Chellaiah has sold the entire suit property to the second defendant, who in turn sold a portion of the property to the first defendant and another portion to the fourth defendant, that he executed a power of attorney in favour of one Pandi Thevar, who in turn sold the said property to some others and that therefore, the subsequent purchasers from the said Chinna Chellaiah have been in possession and enjoyment of the suit property as absolute owners.

5. The case of the plaintiffs is that there was no such exchange between Periya Chellaiah and Chinna Chellaiah, that since the second defendant had already encroached items 2 and 3 of the suit property and



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made some superstructures, the plaintiffs were constrained to file the above suit, that during the pendency of the suit, the defendants 5 to 7 have continued their encroachments by extending the same in the remaining vacant possession in the first item of the suit property and raised some constructions, that since the defendants have also encroached the remaining portion in the first item of the suit property and made some superstructures, the plaintiffs are forced to file the present amendment petition to claim that portion of the property (which is described as 4th item), after removing the superstructures, that since Periya Chellaiah was the owner of the suit property, sale deed executed by Chinna Chellaiah in favour of the second defendant and the sale deeds and the power deed executed by the second defendant are all null and void and as such, the said documents have to be declared as null and void and for such relief, the plaint has to be amended.

6. It is the further case of the plaintiffs that the proposed amendments will not change the nature of the suit and the same are very much necessary for the complete adjudication of the issues between the parties, that the proposed amendment was necessitated for removing the encroachments which were made during the pendency of the suit and that



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the plaintiffs will be put to irreparable loss and injury if the proposed amendment is not permitted and that no prejudice would be caused to the defendants.

7. As already pointed out, the main defence of the defendants is that the suit property was owned by Chinna Chellaiah and the subsequent purchasers have been in possession and enjoyment of the suit property by having constructions therein, that the plaintiffs have never been in possession and enjoyment of the suit property, that the proposed amendments are barred by limitation, that the plaintiffs have filed the above amendment petition as if the defendants have made encroachments over the suit property during the pendency of the suit and that the defendants will be put to irreparable loss and hardship if the proposed amendment is allowed and the same would cause injustice to them.

8. It is pertinent to note that the plaintiffs are claiming ownership over the suit property through Periya Chellaiah and whereas the defendants are claiming ownership through Chinna Chellaiah and that though the partition was admitted by both parties, the dispute is with regard to the exchange deed that was entered into between the said Periya



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Chellaiah and Chinna Chellaiah. As already pointed out, the plaintiffs have filed the above suit to declare the title over the suit property and for mandatory injunction for the removal of the encroachments made in the portion of the suit property, mainly on the basis that the suit property is belonging to them. According to the plaintiffs, during the pendency of the suit, since the defendants have extended their encroachments to the remaining portion of the suit property, the plaintiffs were forced to seek the proposed amendment for removal of encroachments in the fourth item of the property, a part of the first item of the suit property.

9. The learned Judge, considering the specific case of the plaintiffs that the encroachments in the portion of the first item of the suit property (4th item of the property) were made pending suit and taking note of the legal position that the Court can allow the amendments for incorporating the subsequent events or developments happened after filing of the suit, has permitted the proposed amendment for mandatory injunction.



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10. The learned Counsel for the revision petitioners would mainly contend that the proposed amendment with regard to the adding of the prayers to declare that the sale deeds are null and void are barred by time and relied on the decision of this Court in ***P.Mariappan Vs. P.Mohankumar*** reported in ***2021-2-L.W.,387***, wherein the petitioner therein filed a suit for declaration and injunction in respect of his half share in the suit property, that the defendant has also laid counter claim for recovery of possession, that after 3 years from the filing of the suit, the petitioner filed a petition for amendment to include the prayer declaring that the sale deed executed in favour of the respondent as null and void and the learned Judge, by observing that the right to sue for declaration of title first arose even on the date of plaint, as the petitioner had knowledge about the sale deed dated 10.04.2002 even at the time of filing of the suit, has held that the amendment sought for by the petitioner is clearly barred by time.

11. But in the case on hand, the main contention of the plaintiffs is that since Chinna Chellaiah had absolutely no right, title or interest over the property, the sale deed executed by him and the subsequent sale deeds executed by the purchasers from Chinna Chellaiah are null and



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void. The learned trial Judge, by referring to the decisions of this Court that whether the amendment is barred by limitation cannot be gone into at the time of deciding the petition for amendment and is not a ground for rejecting the amendment, has allowed the proposed amendment.

12. It is pertinent to note that in case if the document sought to be challenged is void in the eye of law, then it is not at all necessary to set aside the document or even ask for declaration regarding the validity of that document. The Hon'ble Supreme Court in the case of *State of Maharashtra Vs. Pravin Jethalal Kamdar (dead) by LRs.*, reported in *AIR 2000 SC 1099*, wherein the possession was alleged to be taken under a void document and a suit was filed for declaration and recovery of possession, the Hon'ble Apex Court has held that there was no need to seek declaration about the invalidity of the document and that even if the relief of recovery of possession is sought for, the suit would be governed by Article 65 of the Limitation Act and not by Article 58 of the Limitation Act. The Hon'ble Supreme Court in *Prem Singh and Others Vs. Birbal and others* reported in *2006(5) SCC 353*, has held that when a document is void ab initio, a decree for setting aside the same would not be necessary as the same is non-est in the eye of law, as it would be a



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nullity and even a declaration regarding the void character of the document is sought for, ie., only incidental relief which would not cover the period of limitation for the suit.

13. In the case of *M/s South Konkan Distilleries and another Vs. Prabhakar Gajanan Naik and Others* reported in *AIR 2009 SC 117*, the Hon'ble Supreme Court has dealt with the question of allowing or rejecting the prayer for amendment of pleadings, when the plea of limitation was taken by one of the parties in the suit and the relevant passages are extracted hereunder:

"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 interest of justice."

9. Again in *T.N. Alloy Foundry Co. Ltd. Vs. T.N. Electricity Board and Ors.* [(2004) 3 SCC 392 this Court observed as follows:



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" The law as regards permitting amendment to the plaint, is well settled in L.J. Leach and Co. Ltd. v. Jardine Skinner and Co., it was held that the Court 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 this 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.

It is not disputed that the appellate court has a coextensive power to the trial court. We find that the discretion exercised by the High Court in rejecting the plaint was in conformity with law."

10. From the above, therefore, one of the cardinal principles of law allowing or rejecting an application for amendment of the pleading is that the courts generally, as a rule, decline to allow amendments, if a fresh suit on the amended claim would be barred by limitation on the date of filing of the application. But that would be a factor to be taken into account in the exercise of the discretion as to whether the amendment should be ordered, and does not affect the power of the Court to order it, if that is required in the interest of justice . In Ragu Thilak D.John vs. S. Rayappan & Ors. [2001 (2) SCC 472], this Court also observed that where the amendment was barred by time or not, was a disputed question of fact and, therefore, that



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prayer for amendment could not be rejected and in that circumstances the issue of limitation can be made an issue in the suit itself. In a decision in Vishwambhar & Ors. vs. Laxminarayan (Dead) through Lrs. & Anr. [(2001) 6 SCC 163], this Court held that the amendment though properly made cannot relate back to the date of filing of the suit, but to the date of filing of the application. Again in Vineet Kumar vs. Mangal Sain Wadhera [AIR 1985 SC 817] this Court held that if a prayer for amendment merely adds to facts already on record, the amendment would be allowed even after statutory period of limitation.”

14. Considering the facts and circumstances of the case and also the legal position above referred, the impugned order permitting the proposed amendment cannot be found fault with and this Court is in entire agreement with the finding recorded by the learned trial Judge. Consequently, this Court concludes that the revision is devoid of merits and the same is liable to be dismissed.

15. In the result, the Civil Revision Petition is dismissed. Since the suit is pending from 2010 onwards, learned trial Judge is directed to complete the trial and dispose of the same within a period of two months,



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without being influenced by any of the observations made in the above order. Consequently, the connected Miscellaneous Petition is also dismissed. There shall be no order as to costs.

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NCC : Yes : No
Index : Yes : No
Internet : Yes : No
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To

1. The Additional District Munsif Court, Thirumangalam.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN

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