



C.R.P.(MD)No.1818 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 04.03.2024

PRONOUNCED ON:05.04.2024

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)No.1818 of 2017

and

C.M.P.(MD)No.9650 of 2017

Nelson : Petitioner/1st respondent/1st defendant

Vs.

1.Jename Jayan : 1st Respondent/Petitioner/Plaintiff

2.Murugan

3.Cheellathankam

4.Ponnian Nadar

: Respondents 2 to 4/Respondents 2 to 4/
Defendants 2 to 4

PRAYER:- Civil Revision Petition is filed under Article 227 of the Constitution of India against the order and decreetal order, dated 28.04.2017, made by the learned Principal District Munsif cum Judicial Magistrate, Eraniel in I.A.No.89 of 2013 in O.S.No.184 of 2011.



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For Petitioner : Mr.K.G.Vasudevan
for Mr.R.Karuppiah

For Respondents : Mr.R.Balakrishnan
for R.1
: R.2 and R.4 – exparte
: No appearance for R.3

ORDER

The Civil Revision Petition is directed against the order passed in I.A.No.89 of 2013 n O.S.No.184 of 2011, dated 28.04.2017, on the file of the Principal District Munsif cum Judicial Magistrate Court, Eraniel allowing the petition filed under Order 6 Rule 17 C.P.C.

2. The revision petitioner is the first defendant. The first respondent as plaintiff has filed the suit in O.S.No.184 of 2011 against the revision petitioner and the other respondents claiming declaration that the suit property is belonging to the plaintiff and for recovery of possession and also for permanent injunction restraining the first defendant and their men from in any manner interfering with the right and title of the plaintiff in the suit property. The first defendant has filed the written statement and is contesting the suit. Pending suit, the



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respondent/plaintiff has filed the petition under Order 6 Rule 17 C.P.C., in I.A.No.89 of 2013 to add the prayer of declaration that the settlement deed dated 07.10.1998 is null and void. The revision petitioner / first defendant has filed a counter statement raising objections. The learned trial Judge, after enquiry, has passed the impugned conditional order allowing the petition on payment of costs of Rs.2,000/-. Aggrieved by the order of permitting the proposed amendment, the first defendant has preferred the present revision.

3. The case of the first respondent/plaintiff in the affidavit filed in support of the amendment petition is that the first defendant has filed the written statement denying the plaint averments, that the plaintiff came to know that the first defendant in his written statement has averred that his father Vallarian has executed a settlement deed, vide document No. 1406/1998 in his favour, that the father of the first defendant has no manner of right and title over the suit property and as such, he has no right to execute any settlement in favour of the first defendant, that certain errors have occurred due to oversight in calculating Court fee at the time of filing the suit, that the proposed amendment will not prejudice the first defendant nor change the nature of the suit and that



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therefore, it has become just and necessary to amend the plaint as detailed in the petition.

4. The defence of the revision petitioner/first defendant raised in the counter statement is that the settlement deed was executed and registered on 07.10.1998, that the registration of a document itself is a notice to the petitioner, that the petitioner was well aware of the execution of the settlement deed at that time itself, that the plaintiff cannot seek the relief 14 years afterwards to declare that document as void, that the proposed amendment is hopelessly barred by limitation, that the amendment sought to be introduced are all pre-existing facts, that if the proposed amendment is allowed, it would constitutionally and fundamentally changes the character, nature and cause of action of the suit, that the first defendant's father and his grandfather have been in uninterrupted and hostile possession of the property for about 106 years since 03.02.1906 and that there are absolutely no merit in the petition and the same is liable to be dismissed.

5. As already pointed out, the plaintiff has laid the suit to declare that the suit property is belonging to him and for recovery of possession



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and also for permanent injunction restraining the first defendant from interfering with the right of the plaintiff. The revision petitioner/first defendant in his written statement has taken a stand that his grandfather was the owner of the property in dispute, that the defendants' father Vallarian inherited the property and acquired right and title in the year 1973, that the defendants's father has executed a settlement deed in favour of the first defendant in respect of the suit property and that since they have been in possession and enjoyment of the property, the suit is liable to be dismissed.

6. The plaintiff, by alleging that he came to know about the settlement deed dated 07.10.1998 from the written statement filed by the first defendant and since the first defendant is claiming right over the suit property on the basis of the said settlement deed, has sought for amending the plaint so as to include the prayer to declare that the said settlement deed is null and void.

7. Admittedly, the first defendant has filed the written statement on 03.01.2012. The present amendment petition came to be filed on 14.02.2013. According to the plaintiff, since the petition for amendment



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was filed within 3 years from the date of knowledge about the settlement deed, the contention that the proposed amendment is barred by time, cannot legally be entertained. But according to the first defendant, since the settlement deed was executed on 07.10.1998, the proposed amendment claimed on 14.02.2013 is clearly barred by limitation.

8. At this juncture it is necessary to refer the judgment of the Hon'ble Supreme Court in the case of ***M/s South Konkan Distilleries and another Vs. Prabhakar Gajanan Naik and Others*** reported in ***AIR 2009 SC 117***, wherein 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."



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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:

"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



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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 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.”

9. In the case on hand also, whether the proposed amendment is barred by limitation or not cannot be gone into at this stage, as the same is not a direct question of law and it can only be considered as a mixed question of fact and law and that cannot be decided at this stage and it is a matter for trial. Moreover, the plaintiff has claimed only pre-trial amendments. Considering the above facts and circumstances, the learned



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trial Judge has rightly passed a conditional order allowing the petition and as such, the impugned order cannot be found fault with. Consequently, this Court concludes that the Civil Revision Petition is devoid of merits and the same is liable to be dismissed.

10. In the result, the Civil Revision Petition is dismissed. Consequently, the connected Miscellaneous Petition is also dismissed. There shall be no order as to costs. The learned trial Judge is directed to frame an additional issue with regard to the plea of limitation and to decide the same along with the other issues. Since the suit is pending from 2011, the learned trial Judge is directed to complete the trial and dispose of the suit within a period of three months from the date of receipt of a copy of this order.

05.04.2024

NCC : Yes : No

Index : Yes : No

Internet : Yes : No

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To

1.The Principal District Munsif cum Judicial Magistrate,
Eraniel.

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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