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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**RESERVED ON : 30.10.2024****PRONOUNCED ON : 19.11.2024****CORAM****THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN****C.R.P.(MD).No.2714 of 2024 and
C.M.P.(MD)No.15486 of 2024**

B.Pandiselvi

... Petitioner /Petitioner /
Plaintiff

Vs.

1. Seelakariamman @ Ayyathal Temple,
Rep. By its Trustee,
V.Raju,
S/o.Late.Villayutham Pillai,
Near Meenakshi Sethupillai Rice Mill,
Cross Street,
Anuppanadi Main Road,
Chinthamani, Madurai.

2. R.Nagasekar

3. V.Thiraviyam

4. M.Muthuvel

... Respondents/Respondents/
Defendants

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 03.09.2024 in I.A.No.5 of 2023 in O.S.No.115 of 2012 on the file of the



District Munsif Court(FAC), Madurai Taluk, Madurai District and allow the above civil revision petition.

For Petitioner : Mr.B.Prahalad Ravi

For Respondents : Mr.N.Vallinayagam

ORDER

Heard both sides.

2. The plaintiff in O.S.No.115 of 2012 on the file of the District Munsif (FAC), Madurai Taluk is the revision petitioner herein.

3. The petitioner had originally filed the suit for permanent injunction. She then filed I.A.No.5 of 2023 for amending the plaint to include the relief of declaration. Vide order dated 03.09.2024, the Court below dismissed the petition for amendment. Questioning the same, this civil revision petition has been filed.

4. The learned counsel appearing for the revision petitioner reiterated all the contentions set out in the memorandum of grounds of



the civil revision petition and called upon this Court to set aside the impugned order and grant relief as prayed for.

5. I am not swayed by the said submissions.

6. As rightly pointed out by the learned counsel appearing for the respondents, the suit was instituted way back in the year 2012. The written statement was filed on 12.12.2012 questioning the plaintiff's title over the suit property. The Court below had rightly observed that the plaintiff should have sought the relief of declaration within three years therefrom. The amendment petition was filed with the delay of 11 years. There is a direct decision of the Hon'ble Supreme Court on the point. In ***L.C.Hanumanthappa V. H.B.Shivakumar ((2015 (6) CTC 562)***, it was held as follows:-

“13. We have heard the learned counsel for the parties. It is not disputed that Article 58 of the Limitation Act would apply to the amended plaint inasmuch as it sought to add the relief of declaration of title to the already existing relief for grant of permanent injunction. In ***Khatri Hotels (P) Ltd. V. Union of India [(2011) 9 SCC 126 : (2011) 4***



SCC (Civ) 484] , this Court while construing Article 58 of the Limitation Act held as follows: (SCC pp. 138-39, paras 25-30)

“ Article 58 of the Schedule to the 1963 Act, which has a bearing on the decision of this appeal, reads as under:

‘THE SCHEDULE

PERIOD OF LIMITATION

[See Sections 2(j) and 3]

First Division—Suits

<u>‘Description of suit</u>		<u>Period of limitation</u>	<u>Time from which period begins to run</u>
PART III — Suits Relating to Declarations			
58.	To obtain any other declaration.	Three years	When the right to sue first accrues.

Article 120 of the Schedule to the Limitation Act, 1908 (for short ‘the 1908 Act’) which was interpreted in the judgment relied upon by Shri Rohatgi reads as under:

<u>‘Description of suit</u>	<u>Period of limitation</u>	<u>Time from which period begins to run</u>
120.	Suit for which no period of limitation is provided elsewhere in this Schedule.	Six years When the right to sue accrues.’



The differences which are discernible from the language of the above reproduced two articles are:

(i) The period of limitation prescribed under Article 120 of the 1908 Act was six years whereas the period of limitation prescribed under the 1963 Act is three years, and

(ii) Under Article 120 of the 1908 Act, the period of limitation commenced when the right to sue accrues. As against this, the period prescribed under Article 58 begins to run when the right to sue first accrues.

Article 120 of the 1908 Act was interpreted by the Judicial Committee in *Bolo v. Koklan* [(1929-30) 57 IA 325 : AIR 1930 PC 270 : (1930) 32 LW 338] and it was held: (IA p. 331)

‘There can be no “right to sue” until there is an accrual of the right asserted in the suit and its infringement, or at least a clear and unequivocal threat to infringe that right, by the defendant against whom the suit is instituted.’

The same view was reiterated in *Annamalai Chettiar v. A.M.K.C.T. Muthukaruppan Chettiar* [ILR (1930) 8 Rang 645 : (1930-31) 58 IA 1 : (1931) 33 LW 30] and *Gobinda Narayan Singh v. Sham Lal Singh* [(1930-31) 58 IA 125 : (1931) 33 LW 707] .

In *Rukhmabai v. Lala Laxminarayan* [AIR 1960 SC 335 : (1960) 2 SCR 253] , the three-Judge Bench noticed the earlier judgments and summed up the legal position in the following words: (AIR p. 349, para 33)



‘33. ... The right to sue under Article 120 of the [1908 Act] accrues when the defendant has clearly or unequivocally threatened to infringe the right asserted by the plaintiff in the suit. Every threat by a party to such a right, however ineffective and innocuous it may be, cannot be considered to be a clear and unequivocal threat so as to compel him to file a suit. Whether a particular threat gives rise to a compulsory cause of action depends upon the question whether that threat effectively invades or jeopardizes the said right.’

While enacting Article 58 of the 1963 Act, the legislature has designedly made a departure from the language of Article 120 of the 1908 Act. The word ‘first’ has been used between the words ‘sue’ and ‘accrued’. This would mean that if a suit is based on multiple causes of action, the period of limitation will begin to run from the date when the right to sue first accrues. To put it differently, successive violation of the right will not give rise to fresh cause and the suit will be liable to be dismissed if it is beyond the period of limitation counted from the day when the right to sue first accrued.”

14. Given this statement of the law, it is clear that the present amendment of the plaint is indeed time-barred in that the right to sue for declaration of title first arose on 16-5-1990 when in the very first written statement the defendant had pleaded, in Para 13 in particular, that the suit for injunction simpliciter is not maintainable in that the plaintiff had failed to establish title with possession over the suit property. ...



29. Applying the law thus laid down by this Court to the facts of this case, two things become clear. First, in the original written statement itself dated 16-5-1990, the defendant had clearly put the plaintiff on notice that it had denied the plaintiff's title to the suit property. A reading of an isolated paragraph in the written statement, namely, Para 2 by the trial court on the facts of this case has been correctly commented upon adversely by the High Court in the judgment under appeal. The original written statement read as a whole unmistakably indicates that the defendant had not accepted the plaintiff's title. Secondly, while allowing the amendment, the High Court in its earlier judgment dated 28-3-2002 [*L.C. Hanumanthappa v. H.B. Shivakumar*, RFA No. 415 of 1999, decided on 28-3-2002 (KAR)] had expressly remanded the matter to the trial court, allowing the defendant to raise the plea of limitation. There can be no doubt that on an application of *Khatri Hotels (P) Ltd.* [(2011) 9 SCC 126 : (2011) 4 SCC (Civ) 484], the right to sue for declaration of title first arose on the facts of the present case on 16-5-1990 when the original written statement clearly denied the plaintiff's title. By 16-5-1993 therefore a suit based on declaration of title would have become time-barred. It is clear that the doctrine of relation back would not apply to the facts of this case for the reason that the court which allowed the amendment expressly allowed it subject to the plea of limitation, indicating thereby that there are no special or extraordinary circumstances in the present case to warrant the doctrine of relation back



applying so that a legal right that had accrued in favour of the defendant should be taken away. This being so, we find no infirmity in the impugned judgment [*H.B. Shivakumar v. L.C. Hanumanthappa*, 2015 SCC OnLine Kar 3860] of the High Court. The present appeal is accordingly dismissed.”

7. Article 58 of the Limitation Act lays down the period of limitation as three years. The suit period should be reckoned from the date when the right to sue first accrues. In this case, the right to seek the relief of declaration arose on 12.12.2012 when the defendant denied the plaintiff's title.

8. It is well settled that as a general rule, the Court should decline the amendment if the fresh suit on the amended claims would be barred by limitation on the date of application. Of course in *Revajeetu Builders and Developers V. Narayanswamy and Sons and Others ((2009) 10 SCC 84)*, it was observed that the fact that the claim is barred by the law of limitation is one of the facts to be taken into account by the Court in exercising the discretion as to whether the amendment should be allowed or refused but it does not affect power of the Court if the amendment is



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required in the interest of justice. In this case, the Court below took into account the conduct of the plaintiff and declined to exercise its discretion in favour of the plaintiff. The manner in which the Court below has approached the issue cannot be termed as perverse or illegal. Interference in exercising jurisdiction under Article 227 of the Constitution of India is not warranted. The impugned order is sustained. This civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

19.11.2024

Index : Yes/No

Internet: Yes/No

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To

The District Munsif (FAC),
Madurai Taluk, Madurai District.



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C.R.P.(MD)No.2714 of 2024

G.R.SWAMINATHAN,J.

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