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CRP. No.1896 of 2024



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:16.07.2025

Pronounced on:22.08.2025

CORAM

THE HONOURABLE MR.JUSTICE P.B.BALAJI

**CRP. No.1896 of 2024
and CMP. No.10043 of 2024**

Sakuntha (Died)
Manian

Petitioner

Vs

1.M.Sengodan
2.S.Shanmugam

Respondents

PRAYER: This Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 15.03.2023 passed in I.A.No.5 of 2022 in O.S. No.356 of 2013 on the file of the learned Additional District Munsif, Attur, Salem District.

For Petitioner : Mr.K.Shakespeare

For Respondents : Mr.N.Manokaran

ORDER

The second plaintiff in O.S. No.356 of 2013, before the learned Additional District Munsif, Attur is the revision petitioner, challenging the order in I.A. No. 5 of 2022 seeking amendment of the plaint. The Trial Court has dismissed the amendment Application, as against which,



the plaintiff is before this Court.

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2. I have heard Mr.K.Shakespeare, learned counsel for the revision petitioner and Mr.N.Manokaran, learned counsel for the respondents.

3. The learned counsel for the revision petitioner, Mr.K.Shakesphere, would submit that the amendment Application was a pre-trial amendment and the Trial Court ought to have liberally viewed the same and permitted amendment. He would further submit that the Trial Court failed to see that the issue of limitation was only a mixed question of facts and law and the same cannot be decided while enquiring into an application for amendment, in order to deny the pre-trial amendment in favour of the plaintiff. He would therefore pray for the revision being allowed.

4. Per contra, Mr.N.Manokaran, learned counsel for the respondents would submit that the order of the Trial Court disallowing the requests for amendment is by way of a well reasoned order and the same does not require interference. He would further state that the petitioner was aware of the sale deed even on the date of execution of the



sale deed and therefore, rightly the Trial Court has not permitted introduction of a time barred claim which is clearly hit by Article 59 of the Limitation Act, 1963. The learned counsel would therefore pray dismissal of the Civil Revision Petition.

5. I have carefully considered the submissions advanced by the learned counsel on either side. I have also gone through the pleadings in the suit as well as in Interlocutory Application seeking amendment.

6. The plaintiff has filed a suit for declaring the sale deed dated 15.07.2013 as null and void. The said sale deed has been executed by the first defendant in favour of the second defendant. The plaintiff also seeks for consequential permanent injunction to restrain the defendants from alienating or encumbering the suit property. The first defendant has filed a detailed written statement disputing the entitlement of the plaintiff to the reliefs sought for. Pending suit, no doubt before commencement of trial, the second plaintiff took out an Application under Order VI Rule 17 CPC, to include a prayer to set aside the sale deed dated 15.07.2013 executed by the first defendant in favour of the second defendant instead of declaration that the sale deed is null and void. The second plaintiff also



sought for payment of additional Court fee for the said prayer under Section 40 of the Tamil Nadu Court Fees and Suit Valuation Act, 1955.

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7. In the counter to the said Application, the first defendant has stated that the document viz., the sale deed dated 15.07.2013 is sought to be declared as null and void in the plaint and after filing of the written statement, in order to get over the bar under Article 59 of the Limitation Act, 1963 and after the defect was pointed out in the written statement, the amendment Application has been filed and the relief to set aside the sale deed is clearly barred by limitation, not being sought for within a period of three years in terms of Article 59 of the Limitation Act. Therefore, when it is noticeable on the face of the request for amendment that the relief cannot be granted, the Trial Court was entitled to reject the amendment on the ground that it is barred by limitation. A counter affidavit was also filed by the second respondent on similar grounds.

8. The Trial Court finding that the suit has been filed in the year 2013 and the revision petitioner has only chosen to seek a relief of declaration to declare the sale deed as null and void and despite the written statement pointing out the defective prayer, as early as on



26.11.2019, on which date a copy of the written statement was also served on the plaintiff's counsel, the amendment Application taken out in December 2022 is clearly impermissible and the new relief sought for is also barred by limitation.

9. The Trial Court has also relied on the decisions of this Court in *Chinnu Padayachi and another Vs. Dhanalakshmi*, reported in 2012 (1) LW 74, where also the omission was pointed out by the defendant even in the written statement and even thereafter, the Application was not filed within a period of three years from the date of written statement, and proceeded to dismiss the amendment Application. No doubt, the plaintiff has challenged the very same document dated 15.07.2013 in the sale deed. However, the prayer that has been sought for is to declare the said sale deed as null and void. Even from the reading of the plaint, it is clear that the plaintiff was aware of the said sale deed and it was in pursuance of the Power of Attorney executed by the plaintiff in favour of the first defendant. Therefore when the plaintiff had come to Court with such a categorical case, then the plaintiff ought to have valued the suit under Section 40 of the Court Fees Act and not under Section 25(d) and paid a very nominal Court fee of Rs.75.50 paise. Despite the said defect in the



relief being pointed out in the written statement specifically, even as early as on 26.11.2019, the amendment Application came to be filed only on 07.12.2022, clearly beyond the period of three years from the date of receipt of the copy of the written statement.

10. No doubt, the Hon'ble Supreme Court as well as this Court have held that all pre-trial amendments should be liberally allowed. However, it does not imply that when the Court is able to find that the amended relief that is sought for, is clearly barred by limitation, even then, the said amendment should be allowed only because, it does not enlarge the scope of trial and save valuable judicial time. The Trial Court has rightly dismissed the Application, finding that the revision petitioner despite coming to know about the omission/defect, did not seek amendment within a period of three years and therefore, the relief which is now sought to be introduced by way of amendment being clearly barred under Article 59 of the Limitation Act, there was no necessity for permitting the amendment. In fact, the Trial Court has also relied on the decision of the Hon'ble Supreme Court in *Kewal Krishnan Vs. Rajesh Kumar, reported and others*, reported in *AIR 2022 SC 564*, where, it has been held that, if the declaration which is sought to be incorporated by



way of amendment is clearly barred by limitation, then such plea cannot be allowed to be brought into the pleadings, by way of amendment.

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11. I do not find any illegality or perversity in the findings of the Trial Court in dismissing the Application. Accordingly, this Civil Revision Petition is dismissed. Consequently, connected Miscellaneous Petition is also dismissed. No costs.

22.08.2025

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Index : Yes / No
Internet : Yes / No

To:
The Additional District Munsif,
Attur, Salem District.

P.B.BALAJI, J.,

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CRP. No.1896 of 2024

Pre-delivery order in
CRP. No.1896 of 2024
and CMP. No.10043 of 2024

22.08.2025