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CRP.No.2802 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.06.2025

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.R.P.No.2802 of 2022
and CMP.No.1505 of 2022

Sumithra Bhai

.. Petitioner

Versus

K.Venkopa Rao

.. Respondent

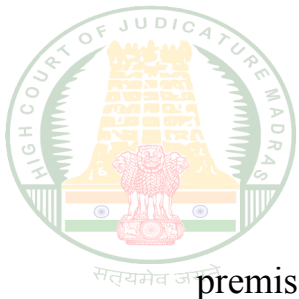
Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 21.04.2022 made in I.A.No.1 of 2022 in A.S.No.4 of 2021 on the file of learned Additional Subordinate Judge, Krishnagiri.

For Petitioner : Mr.K.Venkatasubban
For Respondents : Mrs.R.Poornima

ORDER

Challenging the order of the appellate court rejecting the application filed under Order 6 Rule 17 of CPC for amendment seeking relief of declaration, the present revision has been filed.

2. The suit has been filed originally by the revision petitioner for eviction claiming that the defendant/respondent is the tenant in the shop



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premises. Written statement was filed by the tenant on 10.04.2015 denying the title. Thereafter, it appears that the suit was dismissed on 14.10.2020.

While dismissing the suit, the Trial Court has observed that the plaintiff is claiming title on the basis of the gift deed said to have been executed by one Vittal Rao had omitted to seek relief of declaration. Thereafter, the petitioner has filed application under Order 6 Rule 17 of CPC for amendment before the appellate court only for adding the relief of declaration. It was opposed by the respondent on the ground that as far as the title of the petitioner is concerned, the same was disputed in the year 2015 itself and the declaration ought to have been sought within a period of three years, whereas, the application has been filed only in the year 2022, that too, pending appeal. The appellate court vide impugned order dismissed the application. Challenging the same, the present revision has been filed.

3. The learned counsel for the petitioner submitted that the amendment sought in the appeal stage will not change the character of the suit itself. The suit itself is filed for recovery of possession based on the gift deed executed in favour of the revision petitioner, therefore, the

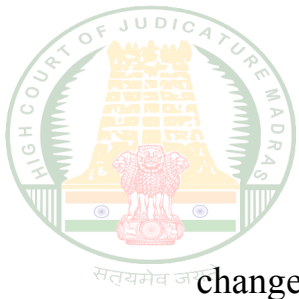


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question of applying limitation for the relief of declaration does not arise at all, since, the main relief itself is for recovery of possession which is governed under Article 65 of the Schedule to the Limitation Act, 1963. The suit is not for mere declaration simplicitor, the larger relief of recovery of possession; in such case, only Article 65 of the Schedule to the Limitation Act, 1963 will apply. Therefore, the contention of the respondent that the declaration relief ought to have been sought within a period of three years does not hold any water. Hence, seeks for allowing the revision petition.

4. Whereas, the learned counsel for the respondent submitted that as the title of the revision petitioner was disputed in the year 2015 itself, in such case, the limitation comes into play. The declaration ought to have been sought within a period of three years, whereas, the amendment application was filed only in the year 2022. Therefore, such plea of declaration is barred by limitation and the same cannot be entertained. It is her further contention that the Court Fee ought to have been paid under Section 25(a) of the Tamil Nadu Court-Fees and Suits Valuation Act, 1955, in such case, the very jurisdiction of the Trial Court itself would



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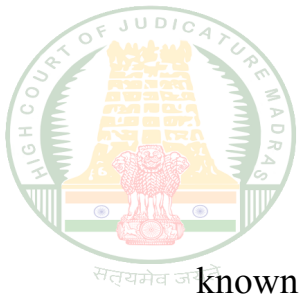
change. Therefore, if the amendment is allowed at this stage, the same will take away the accrued the interest of the respondent. Further, there is no proper reasons assigned in the affidavit with regard to the limitation by the revision petitioner. Hence, opposed the revision petition.

5. In light of the above pleadings, now, the following point arises for consideration in this revision:

(i) Whether the amendment sought in the appeal stage particularly seeking relief of declaration will change the character of the suit itself?

Point (i)

6. It is not in dispute that the suit has been filed for recovery of possession of the property from the respondent. The plaintiff has based his claim on the basis of a registered gift deed said to have been executed by one Vittal Rao who is said to be the original owner. The suit has been laid as if the respondent is the tenant in the small area namely shop. Whereas, it is the contention of the respondent that he has become owner by virtue of an unregistered will executed by one Vittal Rao, however, the fact remains that the so-called unregistered will has not been established in the manner



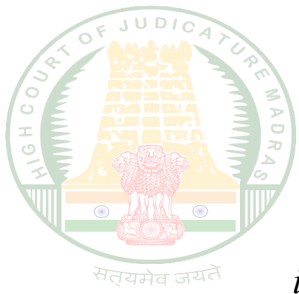
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known to law. Further, the will does not contain signatures of two attesting witnesses. Therefore, it cannot be said that there is a valid will in favour of the respondent. Be that as it may, the suit itself is filed for recovery of possession; in such case, limitation is normally 12 years as per Article 65 of the Schedule to the Limitation Act. Though in the normal circumstances, if any right has been denied, limitation for seeking declaration is three years which is governed under Articles 56 to 58 of Schedule to the Limitation Act, but the fact remains that the plaintiff has not asserted his right for the first time only after the refusal made by the respondent in the written statement in the year 2015. In fact, the suit itself is filed asserting right for recovery of possession. Such view of the matter, though the period of three years is provided for seeking declaration, since, the main relief is only for recovery of possession, the period of limitation for declaration will not come in the way.

7. In this regard, the Hon'ble Supreme Court in the case of *N.Thajudeen vs. Tamil Nadu Khadi and Village Industries Board* reported in 2024 SCC OnLine SC 3037 has held as follows:

“ 21. The limitation for a suit for declaration is provided under Part III of the Schedule to the Limitation Act, 1963. It



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is governed by Articles 56-58 of the Schedule to the Limitation Act. Under all the aforesaid three Articles, the limitation for a suit for declaration is three years. The limitation provided under Articles 56 and 57 of the Schedule to the Limitation Act is in respect to declaration regarding forgery of an instrument issued or registered and validity of the adoption deed. Article 58 of the Schedule to the Limitation Act prescribes the limitation for decree of declaration of any other kind and therefore, the suit for declaration of title would essentially fall under Article 58 of the Schedule to the Limitation Act and the limitation would be three years from the date when the right to sue first accrues.

22. In the case at hand, the suit is not simply for the declaration of title rather it is for a further relief for recovery of possession. It is to be noted that when in a suit for declaration of title, a further relief is claimed in addition to mere declaration, the relief of declaration would only be an ancillary one and for the purposes of limitation, it would be governed by the relief that has been additionally claimed. The further relief claimed in the suit is for recovery of possession based upon title and as such its limitation would be 12 years in terms of Article 65 of the Schedule to the Limitation Act.

23. In *C. Mohammad Yunus v. Syed Unnissa* it has been laid down that in a suit for declaration with a further relief, the limitation would be governed by the Article governing the suit for such further relief. In fact, a suit for a declaration of title to immovable property would not be barred so long as the right to such a property continues and subsists. When such right continues to subsist, the relief for declaration would be a continuing right and there would be no limitation for such a suit. The principle is that the suit for a declaration for a right cannot be held to be barred so long as Right to Property subsist.”

8. With regard to the amendment of plaint at the stage of first appeal



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is concerned, the Hon'ble Supreme Court in the case of *Mallavva and another vs. Kalsammanavara Kalamma (Since Dead) by Legal Heirs and others* reported in 2024 SCC OnLine SC 3846 has held as follows:

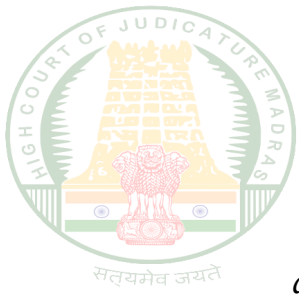
“ 23. It is well settled that rules of procedure are intended to be a handmaid to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of rules of procedure. The court always gives relief to amend the pleading of the party, unless it is satisfied that the party applying was acting *mala fide* or that by his blunder, he had caused injury to his opponent which cannot be compensated for by an order of cost. (*Mahila Ramkali Devi v. Nandram (Dead) through Legal Representatives*, (2015) 13 SCC 132.

24. In *Jai Jai Ram Manohar Lal v. National Building Material Supply, Gurgaon*, (1969) 1 SCC 869, this Court held that the power to grant amendment to pleadings is intended to serve the needs of justice and is not governed by any such narrow or technical limitations.

25. In *Pandit Ishwardas v. State of Madhya Pradesh*, (1979) 4 SCC 163, this Court observed:

“4. We are unable to see any substance in any of the submissions. The learned counsel appeared to argue on the assumption that a new plea could not be permitted at the appellate stage unless all the material necessary to decide the plea was already before the court. There is no basis for this assumption.

5. There is no impediment or bar against an appellate court permitting amendment of pleadings so as to enable a party to raise a new plea. All that is necessary is that the appellate court should observe the well-known principles subject to which amendments of pleadings are usually granted. Naturally one of the circumstances which will be taken into consideration before an amendment is granted is the delay in making the application seeking such amendment



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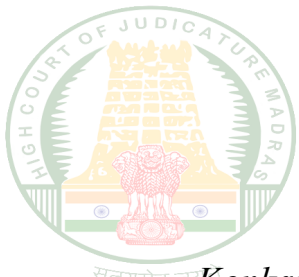
and, if made at the appellate stage, the reason why it was not sought in the trial court. If the necessary material on which the plea arising from the amendment may be decided is already there, the amendment may be more readily granted than otherwise. But, there is no prohibition against an appellate court permitting an amendment at the appellate stage merely because the necessary material is not already before the court.”

Emphasis supplied

9. With regard to the amendment of the suit for the claims which are time barred can be allowed in the interest of justice and the issue of limitation can be framed separately for deciding is concerned, the Hon'ble Supreme Court in the case of Life Insurance Corporation of India vs. Sanjeev Builders Private Limited and another reported in (2022) 16 SCC 1 has held as follows:

“26. But undoubtedly, every case and every application for amendment has to be tested in the applicable facts and circumstances of the case. As the proposed amendment of the pleadings amounts to only a different or an additional approach to the same facts, this Court has repeatedly laid down the principle that such an amendment would be allowed even after the expiry of statutory period of limitation.”

10. With regard to the proposition that no absolute rule that in every case where a relief is barred by limitation amendment should not be allowed is concerned, the Hon'ble Supreme Court in the case of *South*

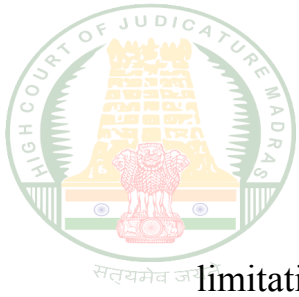


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Konkan Distilleries and another vs. Prabhakar Gajanan Naik and others
reported in (2008) 14 SCC 632 has held as follows:

“11. Before we deal with the orders of the courts below, as to whether the application for amendment of the written statement and the counterclaim was rightly rejected or not, let us consider the laws on the question of allowing or rejecting a prayer for amendment of the pleadings when the plea of limitation was taken up by one of the parties in the suit. It is well settled that the court must be extremely liberal in granting the prayer for amendment, if the court is of the view that if such amendment is not allowed, a party, who has prayed for such an amendment, shall suffer irreparable loss and injury. It is also equally well settled that there is no absolute rule that in every case where a relief is barred because of limitation, amendment should not be allowed. It is always open to the court to allow an amendment if it is of the view that allowing of an amendment shall really subserve the ultimate cause of justice and avoid further litigation.”

11. Considering the above and the very factual aspects pleaded by both sides in the plaint and the written statement indicate that issue is very narrow, the plaintiff asserted her right over the immovable properties, therefore, merely, because a specific relief of declaration was not sought initially, it cannot be said that such relief cannot be sought at any stage. This Court is of the view that as the larger relief of recovery of possession is maintainable and the limitation is 12 years, mere amendment of relief for declaration will not change the character of the suit and the plea of



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limitation will not be relevant, since the main issue is with regard to the title of the properties. Hence, the order of the appellate court dated is 21.04.2022 is hereby set aside and the application for amendment is allowed. The appellate court is directed to permit the plaintiff to carry out the necessary amendments and thereafter, the appeal shall be disposed of within a period of four months from the date of receipt of a copy of this Order.

12. Accordingly, this revision stands allowed. No costs. Consequently, connected miscellaneous petition stands closed.

03.06.2025

Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No
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To,

1.The Additional Subordinate Judge
Additional Sub Court, Krishnagiri.

2. The District Munsif
District Munsif Court, Krishnagiri

3.The Section Officer
VR Section, Madras High Court

N.SATHISH KUMAR, J.,



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