



CRP.No.2730 of 2022

THE HIGH COURT OF JUDICATURE AT MADRAS

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Order reserved on : 30.07.2025

Order pronounced on :14.08.2025

CORAM

THE HON'BLE MR. JUSTICE P.B.BALAJI

CRP.No.2730 of 2022
& CMP.No.14241 of 2022

M.Govindarajan

..Petitioner

Vs.

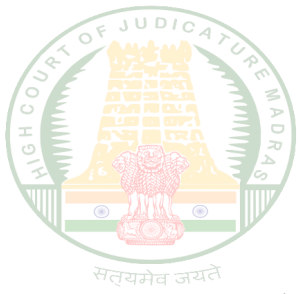
1.Soodamani
2.Santhanalakshmi
3.Sampathkumar
4.Umamaheshwari

..Respondents

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decreetal order of the Additional Subordinate Court, Dharmapuri, dated 12.07.2022 in I.A.No.265 of 2019 in O.S.No.18 of 2016.

For Petitioner : Mr.P.Valliappan
Senior Counsellor
for M/s.P.V.Law Associates

For Respondents : Mr.V.Raghavachari
Senior Counsellor
for Mrs.V.Srimathi



ORDER

The plaintiff, aggrieved by the order of dismissal of an application for amendment of the plaint, has come up by way of the present revision petition.

2.I have heard Mr.P.Valliappan, learned Senior Counsel for M/s.P.V.Law Associates for the petitioner/plaintiff and Mr.V.Raghavachari, learned Senior Counsel for Mrs.V.Srimathi, learned counsel for the respondents/defendants.

3.Mr.P.Valliappan, learned Senior Counsel for the petitioner would submit that the suit is one for partition of the suit property and claiming 1/5 share in the same. He would further submit that in the written statement, the defendants had contended that the father had executed a registered settlement deed as early as on 16.07.2013 in favour of the 3rd respondent herein. According to the learned Senior Counsel for the petitioner, the said settlement deed is a fabricated document having been brought about by fraud and coercion and though the plaintiff is entitled to ignore the same, only by way of abundant caution, the application was filed to amend the plaint, seeking the relief of declaration that the said settlement deed was null and void.

4.The learned Senior Counsel would further submit that not only was the



amendment sought for pre-trial, but also only in line with the pleadings already available in the plaint and only in order to avoid any technical defence that may be raised against the claim for partition, the amendment application was filed. The learned Senior Counsel for the petitioner would place reliance on the following decisions:

1. *Muthusamy and Others Vs. Loganathan and Others* (2021 (4) CTC 699).
2. *Revajeetu Builders and Developers Vs. Narayanaswamy and Sons and Others* ((2009) 10 SCC 84).
3. *Rajesh Kumar Aggarwal and Others Vs. K.K.Modi and Others* ((2006) 4 SCC 385).
4. *Gajanan Jaikishan Joshi Vs. Prabhakar Mohanlal Kalwar* ((1990) 1 SCC 166).
5. *A.K.Gupta and Sons Limited Vs. Damodar Valley Corporation* (1965 SCC Online SC 49).
6. *Dinesh Goyal alias Pappu Vs. Sumar Agarwal (Bindal) and Others* (2024 SCC Online SC 2615).
7. *Church of South India Trust Association, Tiruchirapalli-Thanjavur Diocesan Council represented by its Diocesan Treasurer, Mr.R.Sureshkumar and Others Vs. KovilPillai and Others* (2008-3-L.W.86).
8. *South Konkan Distilleries and Another Vs. Prabhakar Gajanan Naik and Others* ((2008) 14 SCC 632).

5.Per contra, Mr.V.Raghavachari, learned Senior Counsel for the respondents would state that the Trial Court has rightly dismissed the application, finding that the relief that is now sought to be introduced is clearly barred under the provisions of the Limitation Act and such a prayer cannot be



permitted to be introduced in the plaint. He would also refer to the dates of filing of the written statement and the date on which the amendment application came to be filed and therefore, he would contend that there is no room for any leverage being given in the matter and when limitation was staring on the face of the record, there is no point in permitting the amendment sought for by the plaintiff. The learned Senior Counsel would place reliance on the following decisions:

- 1.Mallavva and Another Vs. Kalsammanavara Kalamma (since dead) by LRs and Others (2024 SCC Online SC 3846).*
- 2.J.Vasanthi and Others Vs. N.Ramani Kanthammal (dead) represented by LRs and Others ((2017) 11 SCC 852).*
- 3.L.C.Hanumanthappa (since dead) represented by LRs Vs. H.B.Shivakumar ((2016) 1 SCC 332).*
- 4.Radhika Devi Vs. Bajrangi Singh and Others ((1996) 7 SCC 486).*

6.I have carefully considered the submissions advanced by the learned Senior Counsel on either side. I have also gone through the records, including the pleadings as well as the impugned order.

7.The suit has been filed by the revision petitioner seeking partition and separate possession of his 1/5 share. The written statement came to be filed by the 3rd defendant on 20.06.2016. In the said written statement, the 3rd defendant has specifically pleaded that on 16.07.2013, the father had executed a registered



settlement deed in favour of the 3rd defendant and that the said settlement deed has been acted upon and the 3rd defendant has been in enjoyment of the suit property ever since.

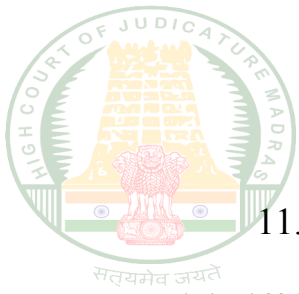
8. Admittedly, the amendment application was taken out by the plaintiff only on 07.11.2019 and there can be no second opinion with regard to the fact that the amendment application has been sought for clearly after a lapse of three years from the date of knowledge of the registered settlement deed in favour of the 3rd defendant. Even assuming and giving the benefit of doubt to the plaintiff that he did not know about the settlement deed executed by his father during his lifetime, at least when the written statement was filed, the plaintiff had knowledge and therefore, in order to seek for a declaratory relief challenging the said settlement deed, at least from that date of the written statement, the application ought to have been filed within a period of three years. This has clearly been pointed by the learned Trial Judge while dismissing the application for amendment.

9. Mr. P. Valliappan, learned Senior Counsel for the petitioner places strong reliance on the decision of the Hon'ble Supreme Court in *Muthusamy's case*, where also despite the amendment having been sought for after lapse of



three years from the date of getting knowledge, this Court proceeded to permit the amendment. In the said case, I find that though it was also a suit for partition, the case of the plaintiff was that the properties were having an ancestral nucleus and even in the plaint, there was a reference to the settlement deeds, under which the properties came to be settled. However, the plaintiff had prayed for the relief challenging the settlement deeds as non-est and that was sought to be included by way of amendment, after the period of three years, despite having knowledge about the documents.

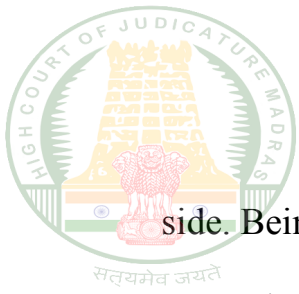
10. In such circumstances, this Court finding that the plaintiff had pleaded and had disclosed the settlement deeds in the plaint and the amendment relating back to the date of plaint, then the question of limitation itself would become non-est and invalid in the eye of law and has based his claim for partition on the ground that the properties were ancestral in nature, this Court held that the amendment does not bring about any new cause of action and it surrounds facts already pleaded and therefore, essence of doctrine of relation back was applied to entertain the amendment. However, in the present case, there is no reference to the settlement deed in the plaint and therefore, the said decision would not apply and come to the aid of the plaintiff.



11. In fact even in *Muthusamy's case*, this Court has held that if the plaintiff had sought for partition without any pleading regarding the settlement deeds, then he can never introduce a prayer with respect to the said documents and therefore, what weighed in the mind of this Court was that the plaintiff had disclosed the documents even in the plaint and the omission to seek a relief alone could be explained in evidence.

12. The other decision that has been relied on by the learned Senior Counsel for the petitioner, in *Revajeetu Builder's case*, where the Hon'ble Supreme Court held that the basic test which would govern the Courts' discretion in grant or refusal of amendment is whether such amendment is necessary for determination of real question in controversy and if the Court finds the amendment sought for is imperative, proper for effective adjudication of the case and refusing amendment would lead to injustice or multiple litigation, then the amendments should be ordered.

13. In *Rajesh Kumar Aggarwal's case*, the Hon'ble Supreme Court held that the object of Rule 17 to Order VI of CPC is that the Court should allow all amendments that are necessary for determining the real question in controversy between the parties, provided it does not cause injustice or prejudice to the other

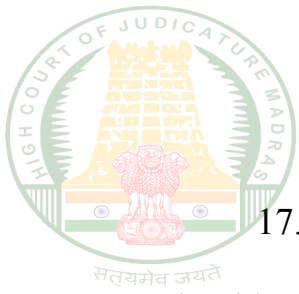


side. Being the rule of justice, equity and good conscience, the Hon'ble Supreme Court held that the power of amendment should be exercised in the larger interest of doing full and complete justice to the parties before the Court.

14.In *Gajanan Jaikishan Joshi's case*, the Hon'ble Supreme Court finding that the amendment was only for completing the cause of action for specific performance which relief had already been prayed, no fresh cause of action being sought to be introduced, it was held that there is no question of causing injustice to the respondent.

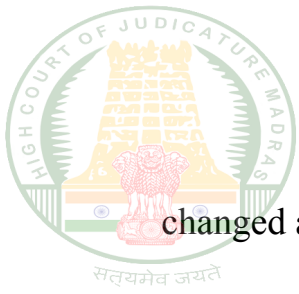
15.In *South Konkan Distilleries's case*, the Hon'ble Supreme Court held that the Court, as a Rule should decline to allow amendments, if a fresh suit on the amended claim would be barred by limitation, on the date of filing of the application and that the same should be taken into account in the exercise of discretion as to whether the amendment should be ordered, and does not affect the power of the Court to order it, if it is required in the interest of justice.

16.In *A.K.Gupta's case*, the Hon'ble Supreme Court held that the Court has power to allow amendments in connection with claims which have become time barred, if special circumstances exists and it be in the interest of justice.



17. In *Dinesh Goyal's case*, the Hon'ble supreme Court held that the Court should adopt liberal approach in granting leave to amend pleadings and if the amendment is necessary for determining the real question in controversy, provided it does not cause injustice or prejudice to the other side, then the word 'shall' being used in the later part of Order VI Rule 17 of CPC, it is mandatory for allowing the amendment. In the very same decision, it is also noticed that referring to *Life Insurance Corporation of India Vs. Sanjeev Builders*, reported in 2022 SCC Online SC 1128, the Hon'ble Supreme Court has held that amendment should be disallowed, if by amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side or when the amendment does not raise a time barred claim resulting in the divesting the other side of a valuable accrued right or when the amendment completely changes the nature of the suit or it is malafide or in the event of the amendment resulting in the other side losing a valid defence.

18. In *Church of South India's case*, this High Court held that true test is whether the amendment is foreign to the subject matter of the suit and not whether it would be in the interest of justice to grant it and that amendment may be allowed irrespective of law of limitation, if cause of action is not going to be



changed and it is in the interest of justice.

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19.Coming to the decisions relied on by the learned Senior Counsel for the respondent, in *L.C.Hanumanthappa's case*, the Hon'ble Supreme Court held that even in the original written statement, the defendant had put the plaintiff on notice denying the title of suit property, then the legal right that is accrued to the defendant cannot be taken away by the plaintiff, by seeking amendment after the statutory period of limitation.

20.In *Radhika Devi's case*, the Hon'ble Supreme Court conscious of the fact that amendment to the plaint is normally granted and only in exceptional cases where accrued rights are taken away by amendment of pleading, the Court would refuse the amendment, held that where a party acquires a right by bar of limitation and the same is sought to be taken away by amendment of the pleading, then amendment would have to be refused. Noticing that even after filing written statement, for three years, no steps were taken to seek amendment of the plaint, the Hon'ble Supreme Court held that the accrued right in favour of the respondent would be defeated, if permission is granted to amend the plaint. The decision in the said case would in fact squarely apply with full force to the facts of the present case.



21.In *T.L.Muddukrishana's case*, the Hon'ble Supreme has held that if a fresh suit on the amendment prayer was barred by limitation on the date of filing of the amendment application, then the amendment cannot be permitted.

22.As already discussed above, the 3rd defendant in his written statement had clearly put the plaintiff on notice about the registered settlement deed which virtually washed away the claim for partition. Admittedly, the application for amendment was not taken out within three years from the date of the written statement of the 3rd defendant being filed.

23.On a careful analysis of the ratio laid down by the Hon'ble Supreme Court in the above cases, even in the decisions that have been relied on by Mr.P.Valliappan, learned Senior Counsel for the petitioner, the Hon'ble Supreme Court has always put a rider that if a right has accrued to the opposite party, then such vested right cannot be taken away by permitting amendment. Therefore, I do not find that the Trial Court has committed any error warranting interference under Article 227 of Constitution of India.

24.Though the learned Senior Counsel on either side have also advanced



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arguments with regard to the valuation of the amended reliefs as to whether it should be under Section 25(d) or 40 of Tamil Nadu Court Fees and Suits Valuation Act, in view of my findings herein above that the prayer sought to be included by way of amendment is time barred and cannot be permitted and if permitted, it would take away the rights vested with the defendant, I do not find any requirement to dwell into the correctness of the valuation of the amended prayer under Section 25(d) of the Tamil Nadu Court Fees and Suits Valuation Act. For all the above reasons, I do not find any merit in this revision.

25.In fine, the Civil Revision Petition is dismissed. There shall be no order as to costs. Connected Civil Miscellaneous Petition is closed.

14.08.2025

Speaking/Non-speaking order
Index : Yes/No
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To

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The Additional Subordinate Court, Dharmapuri.

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P.B.BALAJI.J,

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Pre-delivery order made in
CRP.No.2730 of 2022
& CMP.No.14241 of 2022

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