
(1961) 03 MAD CK 0021

In the Madras High Court

Case No : Civil Revision Petition No. 594 of 1960

Arakchand Kankaria

APPELLANT

Vs

Amarchand Kankaria and Others

RESPONDENT

Date of Decision : 23-03-1961

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 33 Rule 5
Transfer of Property Act, 1882 — Section 69

Citation : AIR 1962 Mad 252 : (1962) 1 MLJ 3

Hon'ble Judges : Veeraswami, J

Bench : Single Bench

Judgement

Veeraswami, J.—This revision by the plaintiff is directed against the order of the Sixth Assistant Judge, City Civil Court, Madras declining

leave to sue in forma pauperis. The learned Judge found that prayers (d) and (e) in paragraph 15 of the proposed plaint were barred by limitation

and considered that the proper order to be passed in the circumstances was "to" reject the original petition under Order 33, R. 5 of the Civil

Procedure Code, giving the petitioner an opportunity to file a fresh petition, if he thought it necessary, in respect of his claim for partition of the suit

properties and a declaration that the mortgage in favour of the third respondent did not convey a valid power of sale. The suit which the petitioner

sought to file in forma pauperis was for partition of the properties in B and C schedule between the plaintiff and defendants 1 and 2 for a

declaration that the third defendant third respondent was not entitled to bring the mortgaged property to sale under S. 69 of the Transfer of

Property Act, for setting aside the mortgage deed dated 14-8-1950 in favour of the third defendant third respondent as not binding on the plaintiff

and his share of the joint family assets, for declaring that the decree obtained by the fourth defendant fourth respondent in C. S. No. 352 of 1950

was not binding against the plaintiff and for certain other reliefs.

The City Civil Judge thought that if the plaintiff wanted to impeach the mortgage effected by his brother, he ought to have come to court within

three years from 1953, when he attained the age of majority, though the mortgaged in question was executed only on 14-8-1950. In that view, the

learned Judge held that prayer (d) in respect of that mortgage was barred by time. Similarly, he was of the view that prayer (e) for a declaration in

respect of the decree in C. S. No. 352 of 1950 was also barred by time. According to the learned Judge, the suit should have been filed on or

before 19-2-1955, that is, within three years of the date of the decree. On those findings the learned Judge made an order which I have already

referred to. Hence this revision petition by the plaintiff.

2. Sri R. Gopalaswami Aiyangar the learned counsel for the plaintiff petitioner contends that the view of the learned Judge that prayer (d) is barred

by limitation cannot be supported. So too he contends that the learned Judge was wrong in holding that prayer (e) also is barred by time. The

learned counsel further contends that in any case even assuming without admitting that the two prayers were barred by limitation that by itself did

not justify the learned Judge to pass the order which he did for clause (d-1) of rule 5 of Or. 33 of the CPC only directs that the court shall reject

the application for permission to sue as a pauper where the suit appears to be barred by any law. In other words the contention is that the court

has no jurisdiction to withhold leave to sue in forma pauperis only on the ground that one or more of the prayers as distinguished from the suit as a

whole were barred by limitation. I think the last contention is well founded.

A suit comprises all the prayers and not merely one or more of them. The plaintiff in this case has sued in the main for partition and as incidental to

that prayer he has asked for the other relief namely for setting aside the decree as also the mortgage. Those prayers by themselves did not

constitute the "suit" within the meaning of clause (d-1) of Rule 5 or Order 33, C. P. Code. Where the court finds that one or more of the prayers

which cannot by themselves be said to constitute the suit, are barred by limitation, it has, in my view, no jurisdiction to withhold leave, provided of

course the petitioner is a pauper, to sue in forma pauperis, or to limit the leave to the prayers not found to be barred by limitation, or even to direct

the petitioner to file a fresh petition for leave confining the plaint to those prayers not barred by limitation. The court is bound to reject an

application for permission to sue as a pauper only when it finds that the ""suit"" as such including all the prayers but not merely one or more of them is barred by limitation.

3. On the above view, it follows that the learned City Civil Judge was not right in rejecting the petition. It also follows from the above view it is not

necessary to go into the question whether the learned Judge was right in holding that prayers (d) and (e) were barred by limitation. But I may state

at once that the learned Judge's view that the prayer in respect of the mortgage was barred by time is obviously untenable. But, as I said, I do not

feel called upon to record a finding whether the learned Judge was right in the view he took as regards limitation in respect of prayers (d) and (e).

If and when leave to sue in forma pauperis is granted, the question of limitation will have to be gone into in more detail and decided at the trial of

the suit. In that sense, the finding of the learned Judge on the question of limitation in respect of prayers (d) and (e) cannot be regarded as final as

between the parties. The revision petition is allowed.

The order of the lower court is set aside and the petition for leave to sue in forma pauperis is remitted for fresh disposal after an enquiry into the

alleged pauperism for the entire court-fee payable in respect of each of the prayers including prayers (d) and (e) in the plaint. There will be no

order as to costs. Revision petition allowed.