

**(2007) 03 AP CK 0057**  
**In the Andhra Pradesh High Court**  
**Case No : CRP No. 3490 of 2006**

Chidri Ashabee

APPELLANT

Vs

S. Sulochana and Others

RESPONDENT

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**Date of Decision :** 23-03-2007

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, Order 7 Rule 11, Order 7 Rule 14  
Evidence Act, 1872 — Section 58  
Limitation Act, 1963 — Article 65, 10, 11, 12, 13

**Citation :** (2007) 3 ALD 745 : (2007) 4 ALT 209

**Hon'ble Judges :** L. Narasimha Reddy, J

**Bench :** Single Bench

**Advocate :** K. Narasimhachari, for the Appellant; A. Venkateswarlu and B. Vijaysen Reddy, for the Respondent

**Final Decision :** Dismissed

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## Judgement

L. Narasimha Reddy, J.—Petitioner filed OS. No. 2 69 of 1999, in the Court of XI Additional Senior Civil Judge, City Civil Court, Hyderabad, against the respondents herein, for the relief of declaration of title, in respect of a house bearing No. 1-4-308/19, admeasuring 200 Sq. yards, at Siddiqi Bazaar, Musheerabad, Hyderabad, fully described in the schedule. Apart from that relief, she claimed a decree for Rs. 36,000/- for use and occupation of the suit premises and for Rs. 20,000/- towards value of the superstructure, and further damages at the rate of Rs. 2,000/- per month, till the date of delivery of possession. The respondents resisted the suit and filed a written statement. The trial of the suit is in progress.

2. The petitioner filed IA. No. 163 of 2005 under Order VI Rule 17 CPC, with a prayer to permit her to amend the plaint, to incorporate the plea of delivery of possession and for cancellation of as many as 5 sale deeds. Apart from that, she also filed I.A. No. 162 of 2005, to implead three individuals mentioned therein, as defendants to the suit, and IA. No. 161 of 2005, under Order VII Rule 14 CPC,

to receive 16 documents, mentioned therein. Through separate orders dated 6.2.2006, the trial Court allowed I.A. Nos. 161 and 162 of 2005, but dismissed IA No. 163 of 2005. Hence, this civil revision petition.

3. Sri K. Narasimha Chary, learned Counsel for the petitioner, submits that the averments in the plaint covered the relief of declaration of title, recovery of possession, cancellation of the relevant documents and recovery of damages, and due to oversight, the reliefs of recovery of possession and cancellation of documents were not claimed. As regards the cancellation of documents, it was pleaded that since the documents came to be executed, after the petitioner purchased the property through document dated 28.7.1974, she did not feel the necessity of seeking any specific prayer, and on realizing that the sale transaction covered by the documents would have a bearing on the suit claim, the relief as to cancellation of sale deeds was also prayed for. At a later stage, the learned Counsel supplemented the arguments, by placing reliance upon certain decided cases. He contends that the question as to whether the possession of the respondents became adverse to the petitioner, would be known only after the amendment is allowed and the respondents filed written statement, and the trial Court was not justified in rejecting the application. He contends that the petitioner is entitled to the benefit u/s 14 of the Limitation Act.

4. Sri B. Vijaysen Reddy, learned Counsel for the respondents, submits that even from a perusal of the contents of the plaint, as well as the affidavit filed in support of I.A. No. 163 of 2005, it is evident that the petitioner lost possession, way back in the year 1984, and the relief of recovery of possession is barred by law.

5. As pointed out earlier, the suit was filed for the relief of declaration of title and for recovery of certain amounts towards damages under various heads. It is not a case where the petitioner lost possession of the property, after the suit was filed. The plaint in O.S. No. 643 of 1989 runs into 20 typed pages. The petitioner pleaded that the suit schedule property was purchased by her, through a document, dated 28.7.1974 from one Mr. Pentaiah. She referred to the disputes that arose between herself and the respondents, and the various proceedings that ensued, in relation thereto. A substantial portion of the plaint in the present suit is devoted to explain the various developments that have taken place in OS No. 643 of 1989 filed by the 1st respondent, in the Court of IV Assistant Judge, City Civil Court, Hyderabad, and an injunction granted therein. In the paragraphs relating to cause of action also, reference was made to almost exclusively to the developments in O.S. No. 643 of 1989. In the paragraphs relating to limitation, it was urged that CMA No. 62 of 1989 filed by the petitioner, against the order in I.A. No. 830 of 1989, for punishing the respondents herein, pending enquiry till 5.7.1995, and thereby the suit is within the limitation. In Para-11 of the affidavit filed in support of I.A. No. 163 of 2005, the petitioner stated as under:

I further submit that at the time when the suit was filed, by oversight and mistake, we did not claim relief of delivery of possession of the suit schedule

property which was lost by us on 24.2.1989 during the pendency of the suit O.S. No. 643 of 1989 on the file of the IV Assistant Judge, City Civil Court, Hyderabad, though the relief claimed by us is to the effect for a declaration of ownership of the suit schedule property, including the superstructure existing thereon as on the date of filing of the suit.

From this, it is evident that even according to the petitioner, she lost possession of the suit schedule property on 24.2.1989, during the pendency of O.S. No. 643 of 1989. Admittedly, the I.A. for amendment of the plaint to seek the relief of recovery of possession was filed in April 2005, i.e., after about 16 years from the date of dispossession. The trial Court took the view that even according to the petitioner, she lost possession about 16 years prior to the filing of the application, the plea is clearly barred by limitation, and the amendment cannot be accepted. As regards the relief of amendment for cancellation of documents also, the trial Court took the view that the delay in seeking such a remedy after about 20 years is not explained, and accordingly, dismissed I.A. No. 163 of 2005.

6. It is no doubt true that as per the amendment to Article 65 of the Limitation Act, whenever a suit for recovery of possession based on title is filed, the burden would be upon the defendant, to plead and prove that his possession over the suit schedule property is adverse to the interest of the plaintiff. If the adverse possession continued beyond 12 years, the suit would be liable to be dismissed, as barred by limitation. Before the amendment, it was for the plaintiff to prove that he lost possession of the property, 12 years before filing of the suit.

7. In the matter of permitting amendments to pleadings, the Court is required to maintain a perfect balance, between allowing amendments and requiring the parties to contest the matter on merits, on the one hand, and to ensure that the pleas, which are otherwise barred by limitation, etc., are not permitted to be incorporated, through amendments. Further, if any party claims the benefit u/s 14 of the Limitation Act, it must satisfy the Court that it was prosecuting the relief in another Civil Court with due diligence, on the same issue, in good faith, but on account of lack of jurisdiction, detected at a later point of time, the initial proceedings could not be continued. See *Zafar Khan and Others Vs. Board of Revenue, U.P. and Others*, .

8. In *Ragu Thilak D. John Vs. S. Rayappan and Others*, , the Supreme Court held that if the defendant, in a suit for perpetual injunction, had demolished any portion of the property, during pendency of the suit, necessary amendment to the plaint can be allowed, and the objection as to whether the amendment introduces any plea, which is barred by limitation, can be examined after the amendment is allowed. Similarly, in *Sampath Kumar Vs. Ayyakannu and Another*, , the Supreme Court pointed out that any amendment, which would avoid multiplicity of the suit, can be permitted. Heavy reliance is placed on behalf of the petitioner, on the judgment of the Supreme Court in *Pankaja and Another Vs. Yellappa (D) by Lrs. and Others*, . It was held that if sufficient factual background is present in the pleadings, amendment can be permitted, at a later

stage, and it cannot be rejected, on the ground of limitation. The factors to be taken into account, while examining the application for amendment, in cases of this nature, were summed up in Para-14, as under:

The law in this regard is also quite clear and consistent that there is no absolute rule that in every case where a relief is barred because of limitation an amendment should not be allowed. Discretion in such cases depends on the facts and circumstances of the case. The jurisdiction to allow or not to allow an amendment being discretionary the same will have to be exercised in a judicious evaluation of the facts and circumstances in which the amendment is sought. If the granting of an amendment really subserves the ultimate cause of justice and avoids further litigation the same should be allowed. There can be no straight jacket formula for allowing or disallowing an amendment of pleadings. Each case depends on the factual background of that case.

On finding that there is arguable point, on the question of limitation in that case, the Supreme Court allowed the amendment. It needs to be noted that the amendment, which was sought in that case, was as to declaration of title in a suit, which was filed for the relief of perpetual injunction.

9. The learned Counsel for the petitioner had advanced two more contentions, viz., the plea as to adverse possession must be raised specifically, and it is only on the basis of the evidence, that it can be decided. The other is that even if there are any admissions in the plaint, or in the affidavit filed in support of the IA, as to dispossession, the same cannot bind the petitioner, and they must be decided on their own merits. Reliance is placed upon some precedents.

10. Ordinarily, the adjudication as such, would take place, on the issues framed by the Court, which, in turn, are based upon the pleadings. In other words, the actual area of controversy can be ascertained, only after the defendant appears and files his written statement, and the Court takes into account, the plea raised in the plaint on the one hand, and the defence put forth in the written statement, on the other hand. However, in certain areas, the Court need not wait till the written statement is filed. For instance, if the averments of the plaint disclose that the relief claimed in the suit is otherwise barred, it can straightaway reject it. For example, if the relief claimed in a particular suit is barred by the provisions of A.P. Co-operative Societies Act, or Gram Panchayat Act, and the contents of the plaint disclose that the bar gets attracted, suit can be dismissed, straightaway, leaving it to the plaintiff, to pursue the remedy, in accordance with law. Rule 11 of Order VII CPC, enlists the circumstances under which a plaint can be rejected.

11. Section 3 of the Limitation Act places a duty upon the Court, to examine the question as to whether the matter before it is barred by imitation, notwithstanding the fact that no defence as to limitation was raised. The section reads as under:

Bar of limitation:-(1) Subject to the provisions contained in Sections 4 - 24

(inclusive), every suit instituted, appeal preferred and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence.

(Sub-section (2) is omitted for the present purpose)

12. If, from the facts pleaded by the plaintiff himself, it becomes evident that the suit is barred by limitation, the Court is placed under the duty to dismiss it. However, if the Court finds that the plea as to limitation is to be examined further, it has to postpone the consideration thereof, to subsequent stages. While dismissing the suit, in exercise of power u/s 3 of the Limitation Act, the Court must be satisfied that the plea of limitation does not require any further consideration. In the present context, the petitioner proposes to incorporate the relief of recovery of possession through amendment. This, naturally, is governed by Article 65 of the Limitation Act.

13. It is no doubt true that the starting point for computing limitation, in such cases is the date, on which the possession became adverse. Way back in the year 1878, a Division Bench of the Calcutta High Court explained the concept of "adverse possession" as under:

By adverse possession I understand to be meant possession by a person holding the land, on his own behalf, of some person other than the true owner, the true owner having a right to immediate possession. If by this adverse possession the Statute is set running, and it continues to run for twelve years, then the title of the true owner is extinguished and the person in possession becomes the owner.

14. If the possession of the suit schedule property by a defendant is referable to any permission, express or implied, it cannot be treated as adverse. Had there been, even a semblance of such a plea in the pleading, there would not be any scope for rejection of the relief, on the ground that it is barred. On the other hand, the averments made by the plaintiff disclose that the defendant assumed possession, in utter disrespect of his or her title. Therefore, the possession invariably becomes adverse, and the relief of recovery must have been claimed within the stipulated time. Viewed from this angle, it emerges that the petitioner lost possession of the property, in the year 1989, and ever since then, she did not seek the relief of recovery of possession, till she filed the present application in the year 2005.

15. The claim of the petitioner based on Section 14 of the Limitation Act, on the ground that she filed an application to punish the 8th respondent, for highhandedly dispossessing her, on the strength of an order of temporary injunction obtained in OS No. 643 of 1989, cannot be accepted. The reason is that the said provision can be invoked, only when an independent suit was filed and it was rejected, at a later point of time, for lack of jurisdiction.

16. An effort is made by the petitioner to disown her admissions made in the plaint in the suit, and affidavit filed in support of the I.A., on the ground that

they do not bind her, unless they are decided on their own merits. Reliance is placed upon certain provisions of the Indian Evidence Act. Section 58, thereof, is a complete answer to this contention. Admitted facts need not be proved. Whatever may be the parameters for drawing inferences on the admissions made by other parties, a party cannot disown the admissions made by himself.

17. The effect of permitting the petitioner, to amend the plaint, would be to enable her, to seek the relief of recovery of possession, which, even according to her, was lost in the year 1989. It was not even urged that the possession of the respondents was permissive, or not adverse. Notwithstanding the liberal attitude that Courts are expected to exhibit, in the matter of permitting amendments, a relief, which is merely barred by limitation, cannot be permitted to introduce by way of amendment. The trial Court examined the matter from proper perspective.

18. The civil revision petition is accordingly dismissed. There shall be no order as to costs.