

(2005) 04 MAD CK 0009

In the Madras High Court

Case No : Civil Revision Petition No. 979 of 2003

Gomathi Ammal, K. Varadarajan and K. Sankar

APPELLANT

Vs

G. Kuthalakrishnan, T.P. Gnanasubramanian and G.
Ponnusamy

RESPONDENT

Date of Decision : 27-04-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17
Limitation Act, 1963 — Section 3

Citation : (2005) 04 MAD CK 0009

Hon'ble Judges : R. Banumathi, J

Bench : Single Bench

Advocate : S.S. Sundar, for T.R. Rajaraman, for the Appellant; R.S.
Ramanathan, for 1st Respondent, for the Respondent

Final Decision : Dismissed

Judgement

R. Banumathi, J.—This revision is directed against the the Order and Decree dated 19.2.2003 made in I.A. No. 456 of 2002 in O.S. No.

730 of 1996 on the file of the Principal District Munsif Court, Tirunelveli, allowing the Petition for amendment filed under Order 6 Rule 17 CPC on

payment of cost of Rs.200/-. The Defendants 2, 3 and 4 are the Revision Petitioners.

2. The Plaintiff and Sixth Defendant are related as under:-

Ponnusamy Pillai

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Ganesa Subramanian (D1)

= Gangammal

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Ponnusamy Kuthalakrishnan

D-6 Plaintiff

3. O.S. No. 730/1996:- (This suit was filed as pauper O.P in 1986 on the file of the Sub Court Tirunelveli instituted as Suit O.S. No. 242/1990)

Case of the Plaintiff is that their paternal grandfather Ponnusami Pillai had executed a Registered Will dated 25.1.1963 in respect of the Plaintiff

Schedule Properties and other properties. As per the terms of the Will, the first Defendant was given only a Life Interest in the suit properties.

After his life time, the suit properties are to devolve upon his sons viz, the Plaintiff and the Sixth Defendant. The grandfather had executed the Will

in a sound disposing state of mind and out of his own volition. The first Defendant was leading a wayward and immoral life. Even during the life

time of the testator Ponnusami and after his death also, the first Defendant continued his immoral life. Hence the Plaintiff's mother Gangammal and

Valliammal, grandmother of the Plaintiff had taken care of the Plaintiff and the sixth Defendant and their sisters. In the last week of April 1984, the

Plaintiff came to know that the first Defendant had already alienated the suit property by way of sale on 27.12.1972 in favour of one Krishna

Naidu, husband of the second Defendant and father of Defendants 3 to 5. The first Defendant had no authority or right to alienate the suit

properties which is bequeathed in the Will dated 25.9.1963. Hence the Sale Deed dated 27.12.1972 is void ab-initio and it is not binding on the

Plaintiffs and the sixth Defendant. The purchaser Krishna Naidu is no more. Hence the Plaintiff has filed the suit for declaration that the Plaintiff and

the sixth Defendant are jointly entitled to vested remainder and for injunction restraining the Defendants 1 to 5 from committing waste or otherwise

and causing damage to the "B" schedule properties and also for mandatory injunction directing the Defendants to maintain the Schedule Properties

in a good condition by carrying out the necessary repairs in the schedule property.

4. The Defendants 2 to 5 have filed the Written Statement contending that the Plaintiff and the Defendants 1 to 6 have sold the suit building No.

3/64 in South Street, Thachanallur for more than a lakh of rupees. The Plaintiff and Defendants 1 to 6 have similarly sold Nanjai S. No. 191/1-

3.44 cents in Thachanallur Village. The Plaintiff was having the sale proceeds with him and the same is suppressed by the Plaintiff. The sixth

Defendant is employed and earning more than Rs.2000/- per month by way of wages. On 27.12.1972, Krishna Naidu purchased the property for

the valuable consideration of Rs.15,000/-. The Sale deed was executed by the first Defendant for himself and on behalf of his minor sons, viz., the

Plaintiff and the sixth Defendant, who were under the care and custody of the first Defendant. Sale deed was executed for legal necessity and for

the benefit of the Estate. The said Krishna Naidu purchased the property after making reasonable enquiry as to the necessity. The Plaintiff and the

sixth Defendant are legally bound by the Sale Deed since they are under the pious obligation to pay the debts. The suit filed by the Plaintiff on the

ground that Sale Deed is null and void is not maintainable.

5. The Defendants have also filed Additional Written Statement (in December 2001) contending that the suit filed by the Plaintiff without prayer for

setting aside the Sale Deed dated 27.12.1972 in favour of Krishna Naidu is not legally sustainable and on that sole ground, the suit is to be

dismissed. The Plaintiff has also filed Reply Statement.

6. The parties have adduced evidence. On 9.8.2001, the evidence was closed. The case was adjourned for arguments. At that time, the

Petitioner/Plaintiff filed the Petition to reopen the case. Further witnesses were examined. Additional issues were framed. The case was adjourned

for letting in further evidence.

7. I.A. No. 456 of 2002:- At this stage, the Plaintiff has filed the Amendment Petition under Order 6 Rule 17 CPC seeking to amend the Plaint

prayer by including, "after the words ""(B) schedule properties"" the following words to be added ""by setting aside the sale deed dated 27.12.1972

executed by the 1st Defendant in favour of late Krishna Naidu in respect of the Plaintiff and 6th Defendant's right over the "B" schedule property".

In the said Petition, the Plaintiff has referred to the Additional Written Statement filed on 12.12.2001, wherein the Defendants have raised a plea

that without setting aside the Sale Deed, the suit is not maintainable and to avoid the technical difficulties, it is necessary to amend the Plaint prayer.

The amendment Petition was resisted on the ground that the amendment of pleadings cannot be allowed, since the claim is time barred. It has been further averred that the proposed amendment would deprive the Defendants, the statutory defence and the valuable right accrued under the Limitation Act. Further the proposed amendment would completely alter the character and features of the suit and hence the amendment cannot be ordered.

8. Upon consideration of the rival contentions of the parties, the learned District Munsif allowed the Petition on payment of cost of Rs.200/- The learned District Munsif has pointed out that amendment could be ordered, without prejudice to the contention of the Defendants on their right of limitation. Referring to number of decisions, the learned District Munsif Court adopted the view that the Courts are to adopt a liberal approach in granting permission for amendment.

9. Aggrieved over the allowing of the Petition, the Defendants 2 to 4 have preferred this revision. Vehemently opposing the allowing of the amendment, the learned counsel for the Revision Petitioners has submitted that the amendment filed sixteen years after the filing of the suit would amount to including the prayer barred by limitation. It is contended that the right accrued to the Defendant has been taken away and that the proposed amendment is likely to cause serious prejudice to the Defendants. When the amendment is likely to cause prejudice to the other side, it is contended that the Court should normally decline the amendment. Pointing out the Sale Deed, wherein the Plaintiff and the sixth Defendant, who were then Eo-nominee parties and that the Sale Deed is binding upon them and the trial Court erred in allowing the amendment Petition at the distant point of time particularly when the trial has been completed and the case was posted for arguments and thereafter for recording further evidence. Drawing the attention of the Court to the decision reported in K. Raheja Constructions Ltd. Vs. Alliance Ministries and others, ; 2002 CTC 211 and other decisions, the learned counsel for the Revision Petitioners has contended that when the Plaintiffs have adopted a definite plea that the alienation is void and that the subsequent amendment for setting aside the sale changes the nature of the suit.

10. Countering the arguments the Revision Petitioners, the learned counsel for

the Respondent Plaintiff has submitted that the proposed amendment is only to avoid the multiplicity of proceedings. Submitting that the right of the Plaintiff and the sixth Defendant is only that of the Vested Remainder and that the right to sue accrues only after the death of Life Estate Holder and hence there is no question of delay in filing the amendment. It is submitted that in any event, when the Defendants have filed Additional Written Statement on 12.12.2001, raising a plea that the suit is not maintainable without setting aside the Sale Deed, the Plaintiff was well within the right to seek for amendment. Placing reliance upon 2001 (2) SCC 472 and 2002 (4) CTC 189 it is submitted that the Pre-Trial amendment is to be liberally allowed and that mere delay cannot be a ground for refusing the prayer for amendment.

11. In consideration of the submissions by both sides, the impugned order and other materials on record, the point that arises for consideration is, in allowing the Amendment Petition after sixteen years after the filing of the suit, whether there is improper exercise of discretion by the trial Court and whether the impugned order suffers from infirmity, warranting interference ?

12. Pointing out that the Courts are to adopt a liberal approach in allowing the amendment Petitions, in 2001 SCC 712 (B.K.Narayana Pillai v.

Parameswaran Pillai), the Supreme Court has held :-

The purpose and object of Order 6 Rule 17 CPC is to allow either party to alter or amend his pleadings in such manner and on such terms as may

be just. The power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interest of justice on the basis of

guidelines laid down by various High Courts and the Supreme Court. It is true that the amendment cannot be claimed as a matter of right and under

all circumstances. But it is equally true that the Courts while deciding such prayers should not adopt a hyper technical approach. Liberal approach

should be the general rule particularly in cases where the other side can be compensated with the costs. Technicalities of law should not be

permitted to hamper the Courts in the administration of justice between the parties. Amendments are allowed in the pleadings to avoid uncalled for

multiplicity of litigation.

13. Quoting the decision in B.K.N. Narayana Pillai Vs. P. Pillai and Another, , in 2001 (2) SCC 472 (Ragu Thilak D.John v. S.Rayappan and

Ors.), the Supreme Court has held that liberal approach should be the general Rule and that the amendment cannot be declined. Allowing the appeal, the Supreme Court has held :

The amendment sought could not be declined. The dominant purpose of allowing the amendment is to minimise the litigation. The plea that the relief sought by way of amendment was barred by time is arguable in the circumstances of the case. The plea of limitation being disputed could be made a subject matter of the issue after allowing the amendment prayed for. In the same decision, the Supreme Court has observed that even if the amendment is barred by limitation, the plea of limitation could be agitated in the suit.

14. In 2002 (4) CTC 189 (Sampath Kumar v. Ayyakannu and Anr.), the Supreme Court has condoned the delay of eleven years in filing the amendment Petition. In that case, the Plaintiff filed the suit for permanent injunction from dispossessing him. Pending suit, the Plaintiff moved application for amendment of Plaint, alleging that he had been dispossessed by the Defendant and seeking amendment for relief of declaration of title and redelivery of possession. Holding that such amendment is only in the nature of changing the nature of relief and does not amount to changing the character of the suit, the Supreme Court has held :-

...Order 6, Rule 17 of the CPC confers jurisdiction on the Court to allow either party to alter or amend his pleadings at any stage of the proceedings and on such terms as may be just. Such amendments as are directed towards putting-forth and seeking determination of the real questions in controversy between the parties shall be permitted to be made. The question of delay in moving an application for amendment should be decided not by calculating the period from the date of institution of the suit alone but by reference to the stage to which the hearing in the suit has proceeded. Pre-trial amendments are allowed more liberally than those which are sought to be made after the commencement of the trial or after conclusion thereof. In former case generally it can be assumed that the Defendant is not prejudiced because he will have full opportunity of meeting the case of the Plaintiff as amended. In the later cases the question of prejudice to the opposite party may arise and that shall have to be answered by reference to the facts and circumstances of each individual case. No

strait-jacket formula can be laid down. The fact remains that a mere delay cannot be a ground for refusing a prayer for amendment.

15. Referring to the above said decision, P.Sathasivam,J. in T. Gunaseelan Vs. M. Thamilselvi, has held that even if the application for amendment has been filed after the trial has commenced the Court is empowered to consider such request depending on merits of claim. The learned Judge has observed :-

Pre-trial amendments are to be allowed more liberally than post-trial request for such amendments - On facts held, amendment of pleading requires to be allowed as it would curtail multiplicity of proceedings.

16. Wide powers are given to the Court in allowing the amendment Petition. The power should always be liberally exercised. The object of Order

6 Rule 17 is to allow the amendment for the purpose of determining the real questions in dispute between the parties. Amendment should not be

allowed, if it - (i) changes the nature of the case, or (ii) causes substantial prejudice to the other side.

17. The impugned order is mainly assailed on the ground that it changes the nature of the case and it causes substantial prejudice to the Defendant, seriously affecting the right accrued to the Defendant by way of limitation. Referring to 1957 SC 357 (L.J.Leach & Co., Ltd. v. Jardine Skinner

and Co.), the learned counsel has submitted that if a fresh suit, on the amended claim would obviously be barred by limitation on the date of

application and that factor is to be taken into account in exercise of the discretion as to whether amendment should be ordered. Amendment

Petition is mainly attacked on the ground that it has been filed belatedly in 2002, sixteen years after the filing of the suit and the fresh suit if filed in

2002 would have been barred by limitation and that factor was not properly considered by the trial Court. It is further submitted that the

amendment Petition was filed belated to fill up the lacuna, when the trial was on the verge of close.

18. For better appreciation of this contention urged, it is necessary to note the relevant dates and that of the and filing of the suit and others :-

Impugned Sale Deed ... 27.12.1972

Suit Originally filed as

pauper O.P. in Sub Court

Tirunelveli ... 19.12.1985

Suit registered in Sub Court ... O.S. No. 242/1990

Transferred to DMC

Tirunelveli and renumbered ... O.S. No. 730/1996

Evidence closed and posted

for arguments ... 09.08.2001

Petition filed to reopen and

further evidence adduced

Amendment Petition

I.A. No. 456/2002 filed ... March 2002

18. The main point for consideration is whether the amendment Petition filed in 2002 at the time when the trial was over and whether the

amendment filed sixteen years after filing of the suit is barred by limitation. No doubt, the amendment Petition has been filed in 2002, sixteen years

after the filing of the suit. Order 16, Rule 17 CPC enables the parties to file amended application ""at any stage of the suit"".

19. The Plaintiff has filed the suit for declaration that he and his brother - the sixth Defendant are jointly entitled to the vested remainder in the "B"

suit properties. It is alleged that the Sale Deed dated 27.12.1972 is void ab-initio and not binding on the sixth Defendant. Now, by the proposed

amendment, the Plaintiff seeks to include the prayer to set aside the Sale Deed dated 27.12.1972. The proposed amendment is attacked on the

ground that any suit to set aside the said Deed ought to have been filed within three years on Plaintiff attaining the majority and the suit filed

thereafter is barred under Article 60 of the Limitation Act. Hence it is contended that the proposed amendment seeking to set aside the Sale Deed

is barred by limitation affecting the valuable right accrued to the Defendant. No doubt, the Courts would decline to allow amendment if a fresh suit

on the amended claim would be barred by limitation on the date of application. But it is only a factor to be taken into account in exercise of the

discretion whether the amendment should be ordered in the circumstances of the case. As discussed *infra*, the proposed amendment does not add

a new cause of action, but only alters the nature of the relief sought for.

20. Much contention has been advanced that if the amendment Petition is allowed, it would substantially alter the character of the suit and that the

Plaintiff cannot be permitted to enlarge the limitation. In this regard, the learned counsel for the Plaintiffs has relied upon the decision reported in

2001 (4) CTC 174 (T.N. Electricity Board v. T.N.Alloy Foundry Co. Ltd.,) in which the Division Bench has held :-

The Law of Limitation is intended to protect the Defendants from claims being made long after the periods specified in the law have elapsed. The

Plaintiff cannot, therefore, be allowed to enlarge the period of limitation by merely stating in the plaint that he will come back to the Court at a later

point of time with the revised figure of the damages. If he is unable to state the amount precisely in the Plaint, he must carry out such amendment as

he may think, he is entitled to, within the period of limitation if he is to prevent a challenge to any subsequent application for amendment on the

ground of limitation. The mandate of Section 3 of the Limitation Act is clear and indeed it casts a duty upon the Court to dismiss a suit or

application which is barred by limitation at the threshold.

In the above case, amendment was sought to be made in the factual background that the Plaintiff has sought to enhance the claim of Rs.10.00

lakhs by more than hundred fold and making a claim for Rs.1295.81 lakhs and that huge claim was sought to be made after the period of limitation

for claiming the damages. In that context, the Division Bench has observed that having regard to the rigour of the provision, the Plaintiff cannot be

permitted to spring a surprise by making huge claim and the Division bench dismissed the amendment Petition. Principles in the above decision

cannot be applied to the facts in hand, since the Plaintiff in this case has not thrown any surprise to the Defendant.

21. In Paragraph 9 of the Plaint, the Plaintiff has clearly averred that the first Defendant has no authority or right to alienate the schedule properties

and hence the sale deed dated 27.12.1972 is void ab-initio. The Defendants have also filed the Written Statement pleading about the binding

nature of the Sale Deed, contending that Krishna Naidu had made bona fide enquiries as to the legal necessity for the alienation. The Defendants

are well aware of the claim of the petitioner challenging the Sale Deed. Though

according to the Defendants, the proposed amendment is barred by limitation, the trial Court has allowed the amendment Petition without prejudice to the contention of the Defendants regarding the limitation.

22. Onbehalf of the Revision Petitioners/Defendants reliance has been placed upon P.B. Ramjee and Others Vs. P.B. Lakshmanaswamy Naidu

and Others, wherein the Division Bench of this Court has declined to allow the amendment for setting aside the alienation of the plaint on the

ground that the Plaintiff has not chosen to seek the amendment of the plaint till 1994. In the said case, amendment to set aside the alienation was

made in the Appellate Court and in that view of the matter, the Division Bench has found that the date on which the amendment was prayed for,

the suit was very much barred by limitation with reference to the prayer for setting aside the alienation. In this case, immediately after the filing of

the Written Statement (though during the trial), the Plaintiff has filed the Petition to amend the Plaint seeking to set aside the alienation. Factually,

there could be no comparison between the case in hand and that reported in P.B. Ramjee and Others Vs. P.B. Lakshmanaswamy Naidu and

Others, .

23. Repeated arguments have been advanced contending that when the Plaintiff has filed the suit for declaring his right of Vested Remainder

ignoring the sale Deed, the amendment sought for seeking to set aside the Sale Deed changes the basic character of the suit. It is further submitted

that any such amendment being clearly barred by limitation thereby causes serious prejudice to the right accrued to the Defendant. At the time of

filing the Plaint in 1986, the Plaintiff was aged 31 years, which means, that the Plaintiff must have been born in 1955. The Plaintiff must have

attained majority in 1972. To set aside the alienation by D-1, the suit ought to have been filed within three years of his attaining majority i.e. before

1975. Suit was filed in December 1985. The proposed amendment to set aside the Sale Deed is sought for in 2002. Amendment Application has

been allowed without prejudice to the right of the Defendant to raise the plea of limitation. Considering this aspect, the learned District Munsif has

rightly noted that the Petition is allowed without prejudice to the right of the Defendant to raise the plea of limitation.

24. In cases of this nature, in 2002 (4) CTC 189 the Supreme Court has

observed that the question of prejudice caused to the opposite party is to be considered with reference to the facts and that the interest of the party could be protected by proper directions to preserve the rights accrued, prior to the filing of the application for amendment. In the said decision, the Supreme Court has held thus :-

However, the Defendant is right in submitting that if he has already perfected his title by way of adverse possession then the right so accrued should not be allowed to be defeated by permitting an amendment and seeking a new relief which would relate back to the date of the suit and thereby depriving the Defendant of the advantage accrued to him by lapse of time, by excluding a period of about 11 years in calculating the period of prescriptive title claimed to have been earned by the Defendant. The interest of the Defendant can be protected by directing that so far as the reliefs of declaration of title and recovery of possession, now sought for, are concerned, the prayer in that regard shall be deemed to have been made on the date on which the application for amendment has been filed.

The order of the Supreme Court in the above case could be applied to the facts in hand ordering that the prayer for setting aside the Sale Deed shall be deemed to have been made on the date on which application I.A. No. 456/2002 was filed. The Revision Petitioners/Defendants are also at liberty to file Additional Written Statement raising the plea of limitation.

25. The order of the learned District Munsif allowing the amendment Petition does not suffer from any infirmity. However, it is directed that the prayer for amending the Plaint seeking to set aside the Sale Deed dated 27.12.1972 shall be deemed to have been made on the date on which the application for amendment was filed. With that direction, this revision is dismissed.

26. In the result, the order of the learned Principal District Munsif, Tirunelveli made in I.A. No. 456 of 2002 in O.S. No. 730 of 1996 is confirmed and this revision is dismissed. It is directed that the prayer for amendment (seeking to set aside the Sale Deed dated 27.12.1972) shall be deemed to have been made on the date on which the application for amendment was filed. The learned District Munsif is directed to afford sufficient opportunity to the Revision Petitioners/Defendant to file Additional Written Statement (after the amended plaint copy is filed). Further the District

Munsif is also directed to afford sufficient opportunities to both parties to adduce additional evidence and dispose of the suit in accordance with

law, at an earlier date. In the circumstance of the case, there is no order as to costs.