
(1995) 01 MAD CK 0102
In the Madras High Court

Hayath Begum and Others

APPELLANT

Vs

Sahib Basha and Another

RESPONDENT

Date of Decision : 11-01-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11

Citation : (1995) 1 MLJ 570

Hon'ble Judges : Abdul Hadi, J

Bench : Division Bench

Judgement

Abdul Hadi, J.—Defendants 1 to 8 are the petitioners in this civil revision petition against the order of the court below dated 10.3.1994

allowing O.P. No. 169 of 1990 on its file and thereby permitting the 1st respondent-plaintiff to sue as an indigent person. The suit is for declaration

of plaintiffs title to the suit B schedule property and for possession of suit C schedule property, which is part of suit B schedule property.

2. The only submission made by. learned Counsel for the petitioners is that the court below ought to have rejected the original petition under Order

35, Rule 5(f), C.P.C. which runs as follows:

The court shall reject an application for permission to sue as an indigent person where the allegations made by the applicant in the application show

that the suit would be barred by any law for the time being in force.

According to the said learned Counsel the suit would be barred by res judicata u/s 11 of the CPC in view of the earlier dismissal of the plaintiffs

similar suit O.S. No. 6360 of 1969, which ended in L.P.A. No. 72 of 1981 on the file of this Court. Further according to him, the suit would be

barred by limitation and the court below erred in holding that Article 65 of the

Limitation Act would apply, According to him, the Article applicable is Article 58 or the residuary Article 113 of the Limitation Act.

3. First of all, it must be stated that this Court has consistently held that in all cases of granting leave to sue as an indigent person, the true principle

is that it is primarily for the State to challenge the correctness of such orders as it is the State, which is mainly interested in the demand of the court

fee and that the High Court will not normally interfere, in revision against such orders at the instance of the parties to the suit. (Vide: Kalimuthu

Servai and Others Vs. Govindaswami Servai and Another, . In the present case, even as per the submission of learned Counsel for the petitioners,

the State even remained ex parte in the court below, despite notice to it in the O.P. proceedings.

4. That apart even as per the abovesaid Order 33, Rule 5(f), C.P.C. for deciding the question whether the court can reject the application for

permission to sue as an indigent person, what are to be scanned by the court are the allegations in the application and the court, would not, at the

stage of the said application, consider complicated questions of law, based on the counter-affidavit on behalf of the defendant or other evidence.

(Vide: P. Asokan Vs. Western India Plywoods Ltd., Cannanore, and Govindasami Pillai v. Municipal Council, Kumbakonam ILR Mad, 620.

Now in the present case, from the allegations in the plaint, which was filed along with the original petition, I am unable to see any such bar

contemplated under the abovesaid Order 33, Rule 5(f), C.P.C. Anyway, regarding the abovesaid contention that Section 11, C.P.C. would be a

bar, I straightaway point out that no such bar would exist in the present case since in the prior proceeding which ended in the abovesaid L.P. A.,

the observation of this Court is only as follows:

It is well open to the appellant to work out his right on the basis of the patta, if he is so advised in separate proceedings.

Therefore, prima facie there may not be any bar u/s 11, C.P.C.

5. Then coming to the other question of limitation, the contention of learned Counsel for the petitioners is that Article 65 of the Limitation Act

would not apply as has been held by the court below and only Article 58 or the residuary Article 113 would apply. This contention also has no

merit. Article 65 provides that for a suit for possession of immovable property

based on title the period of limitation is 12 years from the date when possession of the defendant becomes adverse to the plaintiff. Article 58 provides for a suit ""to obtain any other declaration"" that is, any declaration other than that relating to forgery spoken to in Article 56 and that relating to adoption spoken to in Article 57). The period of limitation under Article 58 is only three years from the date when the right to sue first accrues. But, it is settled law that when a plaintiff not only seeks for a declaration, but also for a further relief than a mere declaration, the latter may not be the main, but only an ancillary relief and in such cases limitation would be determined by an Article appropriate to such further reliefs. (Vide: Jagadish Chandra Deo Dhabal Deb Vs. Indian Copper Corporation Ltd. and Another, and MT. Bhoga v. Sarajpal AIR 1951 M.B. 40. It is clear in the present suit that possession relief is the main relief and the abovesaid declaration relief sought for is only an ancillary relief. So, Article 65 alone would apply. If Article 65 applies it necessarily follows that the residuary Article 113 will not apply. Further, it is not the contention of learned Counsel for the petitioners that if Article 65 applies, the suit is barred by limitation.

6. Further, it has also been held in Arakchand Kankaria Vs. Amarchand Kankaria and Others, , that where the court finds that one or more of the prayers are barred by limitation, it has no jurisdiction to withhold leave to sue or to limit the leave to the prayers which are not found barred or even to direct the applicant to file a fresh petition for leave confining the plaint (petition) to such reliefs as are not found barred.

7. For all these reasons, the civil revision petition is not admitted, but dismissed.