
(2005) 09 AP CK 0101
In the Andhra Pradesh High Court
Case No : CRP No. 6632 of 2004

Mechineni Chokka Rao and Others

APPELLANT

Vs

Sattu Sattamma

RESPONDENT

Date of Decision : 13-09-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17
Limitation Act, 1963 — Article 1, 113, 114, 115, 116
Specific Relief Act, 1963 — Section 34

Citation : (2006) 1 ALD 116

Hon'ble Judges : T. Ch. Surya Rao, J

Bench : Single Bench

Advocate : I. Aga Reddy, for the Appellant; N. Subba Rao, for the Respondent

Final Decision : Dismissed

Judgement

T. Ch. Surya Rao, J.—The instant revision petition is directed against the order dated 22-11-2004 passed by the learned Senior Civil Judge, Karimnagar, in I.A.No. 726 of 2004 in O.S. No. 27 of 2000.

2. The unsuccessful respondents/ defendants are the revision petitioners. The respondent herein filed initially the suit for perpetual injunction against the revision petitioners seeking to restrain them from trespassing or interfering with her peaceful possession and enjoyment of the suit land covered by survey No. 522 ad measuring 22 guntas situate at Gangadhara Mandal of Karimnagar District. The trial in the suit having been concluded and after having heard arguments, the suit stood adjourned for judgment. At that stage, the respondent herein filed LA. No. 726 of 2004 seeking leave to amend the plaint mentioning inter alia that she having purchased the suit schedule mentioned land under a registered sale deed dated 26-3-1997 for a valuable consideration of Rs. 2 lakhs from one E. Buchi Reddy, had been in possession and enjoyment of the said land without any interruption and the petitioners who are the adjacent owners, since denied her title and boundaries mentioned in the schedule, she was advised to

amend the plaint by seeking the relief of declaration of her title. That application was resisted on the premises that no specific details whatsoever had been mentioned about the proposed amendments either to add or delete the averments in the plaint and valuation sought to be adopted was of the year 2000 and, therefore, current valuation certificate had to be filed and that the petition for amendment suffered from many irregularities. However, at the time of arguments, it was contended that the petition had been filed at a belated stage and the relief of declaration of title was time barred as per Article 58 of the Limitation Act, 1963 (for brevity "the Act").

3. Under the impugned order, the learned Judge allowed the petition. The petitioners therefore seek to assail the same in the instant revision petition.

4. Sri I. Aga Reddy, learned Counsel appearing for the petitioners, seeks to contend that Article 58 of the Act is the appropriate Article which squarely governs the suit. Per contra, Sri N. Subba Rao, learned Counsel appearing for the respondent, represents that since the suit has been filed in respect of an immovable property, Article 65 of the Act is the relevant Article.

5. Having regard to the rival contentions, the point germane for consideration is whether the proposed amendment is barred by limitation or not and, whether leave can be granted to amend the plaint as prayed for ?

6. The suit was filed for perpetual injunction in respect of an immovable property measuring 22 guntas covered by survey No. 522. Hearing in the suit had been completed by the date on which the application seeking leave to amend the plaint came to be filed. Notwithstanding the same, the Court below having been of the view that mere delay could not be a ground for refusing the prayer for amendment and since the proposed amendment did not change the very nature of the suit, nor the plaintiff was intending to bring a new case, allowed the petition. The core contention of the petitioners that the proposed amendment is barred by limitation conspicuously has not been considered.

7. Having regard to the rival contentions Articles 58 and 65 of the Act are apt to be considered at the outset and they read as under :

Description of suit Period of Time from which period begins to run limitation

58. To obtain any other declaration. Three years When the right to sue first accrues. -----

----- Description of suit Period of Time from which period begins to run Limitation

65. For possession of immovable Twelve years. When the possession of the defendant property or any interest therein becomes adverse to the plaintiff. based on title.

Explanation: -For the purposes of this article-

(a) where the suit is by a remainderman, a reversioner (other than a landlord) or a devisee the possession of the defendant shall be deemed to become adverse only when the estate of the remainderman, reversioner or devisee, as the case may be, falls into possession;

(b) where the suit is by a Hindu or Muslim entitled to the possession of immovable property on the death of a Hindu or Muslim female, the possession of the defendant shall be deemed to become adverse only when the female dies;

(c) where the suit is by a purchaser at a sale in execution of a decree when the judgment-debtor was out of possession at the date of the sale, the purchaser shall be deemed to be a representative of the judgment-debtor who was out of possession.

8. A perusal of the above excerpted provisions shows that to obtain any other declaration the period prescribed under the Act is 3 years from the time when the right to sue first accrues. For possession of immovable property or any interest therein based on title, the period prescribed is 12 years from the date when the possession of the defendant becomes adverse to the plaintiff. A mere glance at the above referred provisions may not help in resolving the controversy and having regard to the rival contentions the matter requires farther elucidation.

9. The Limitation Act bars the remedy but not the right, is the principle behind the Act. The two exceptions to the said principles being acquisition of right and extinguishment of right are dealt under Sections 25 and 27 of the Act respectively. Where a person enjoys an easementary right, uninterruptedly for a period of 20 years, as regards any access, use of light or air, way, watercourse, use of water or other easement, that person acquires an absolute and indefeasible easementary right. Where after the period of limitation prescribed under the Act for instituting a suit for possession of any property is expired, the right of the person to such property will be extinguished. In other words, a person who has a right over an immovable property fails to institute a suit for possession within the period prescribed therefor, his right over the property will be lost. Thus, while Section 25 of the Act confers right of acquisition, Section 27 thereof extinguishes the right.

10. A Schedule has been appended to the Act prescribing various periods of limitation. The, schedule has been suitably divided into three different divisions dealing with suits, appeals and applications respectively. Each division has been again divided into various parts dealing with specified matters. The first division thereof deals with various suits to be filed containing Articles 1 to 113; the second division deals with appeals containing Articles 114 to 117; and the third division deals with applications containing Articles 118 to 137. The first division of the schedule in turn has been divided into ten parts. Part-I thereof deals with suits relating to accounts; Part-II with suits relating to contracts; Part-III with

suits relating to declarations; Part-IV with suits relating to decrees and instruments; Part-V with suits relating to immovable property; Part-VI with suits relating to movable property; Part-VII with suits relating to tort; Part-VIII with suits relating to trusts and trust property; Part-IX with suits relating to miscellaneous matters; and Part-X with suits for which there is no prescribed period. While part-III of first division deals with suits relating to declarations; Part-V thereof deals with suits relating to immovable property. In Part-III there are three Articles, namely, 56, 57 and 58. While Article 56 prescribes three years period of limitation to institute a suit for declaration that the instrument issued or registered is a forged one; Article 57 prescribes an equal period for declaring the alleged adoption as invalid and Article 58, however, prescribes albeit an equal period in respect of any other declaration. It is obvious that Article 58 is in the nature of residuary provision among the declaratory suits. Indubitably the relief of declaration can be sought for in respect of an immovable property or movable property, or in respect of an instrument, or in respect of a decree, or in respect of an adoption. Thus, various types of declaratory reliefs can be sought for pertaining to those categories. Therefore, the relief of declaration alone appears to be not the criterion for prescribing the period of limitation but the subject-matter of the suit in respect of which the declaration is sought for, appears to be germane for consideration.

11. One shall not be oblivious of the fact that part-V of first division specifically deals with category of suits relating to immovable property. Coming in the domain of part-V, Articles 64 and 65 specifically deal with the period of limitation to institute a suit for possession of immovable property based on previous possession and to institute a suit for possession of immovable property or any interest therein based on title. Having regard to the categorisation sought to be made in the Schedule, although Part-III of the first division thereof apparently deals with suits relating to declarations, that part does not deal with suits relating to immovable property inasmuch as Part-V thereof exclusively deals with the suits pertaining to immovable property, prima facie it appears, therefore, that notwithstanding the fact that the suit is filed for the relief of declaration but the suit is in respect of an immovable property, Article 58 of the Act has no application, instead Articles 61 to 67, which specifically deal with the suits relating to immovable property, seem to be applicable.

12. A suit for the relief of declaration simplicitor is not maintainable as per the mandate contained in Section 34 of the Specific Relief Act. If the suit is filed for declaration of title over an immovable property and for the consequential relief of either possession or injunctions, if it is said that still Article 58 governs, it does not stand to reason, nay appears to be somewhat odd. A suit for possession or a suit for perpetual injunction obviously is governed by the relevant Article in Part-V of the first division when that suit pertains to immovable property. Article 58, in my considered view, will not fall foul of Article 65 of the Act. In the event of any inconsistency in between the two Articles mentioned in the Schedule, the endeavour of the Court shall be to give a harmonious construction having due

regard to the scheme and object of the Act.

13. The problem can be viewed in a different dimension. The right over an immovable property will get extinguished as can be seen from Section 27 of the Act only after the expiry of the period prescribed for filing the suit for possession as per Articles 64 and 65 of the Act. Therefore, if the period falls short of the requisite period of 12 years the right over an immovable property will not get extinguished. When the person has a right over an immovable property which right is not extinguished as yet, he can lay the suit in respect of an immovable property even praying for the relief of declaration at any time within the period of 12 years at the end of which, his right would get extinguished. When we consider this clear mandate contained in Section 27 of the Act, it becomes manifest that a declaratory relief in respect of an immovable property can be sought for at any time within the period of 12 years after which the right will get automatically extinguished, notwithstanding the fact that Article 58, the residuary Article for filing declaratory suits, prescribes a period of three years limitation. Thus, when we look, at the scheme of the Act, the above view seems to be plausible and reasonable qua the contrary view sought to be canvassed.

14. The situation seems to be no more *res integra*. In *Pavan Kumar v. K. Gopala Krishna* 1990 (1) APLJ 185 : AIR 1990 NOC 123 (AP), S.S.M. Quadri, J (as His Lordship then was) had taken the view thus :

Where a suit is filed based on title but claiming declaration of title to the suit property with consequential relief of possession Article 65 of the Limitation Act would apply and Article 58 would have no application : Article 58 applies only to a case where declaration simplicitor is sought, that is, without further relief.

15. A learned Single Judge of this Court in *Surabhi Baburao Vs. Vullingala Suryanarayana and Others*, , has taken the view that when there is a specific Chapter viz. part-V relating to suits for immovable property, Article 65 which is relevant Article which provides for limitation, has to be applied and not Article 58 which provides limitation for other declarations.

16. Without noticing the said judgments, P. Venkatarama Reddi, J (as His Lordship then was) had taken the view that residuary Article 58 applies for the declaratory reliefs in respect of immovable property in *N. Raghotham Rao and Anr. v. MCH and Anr.* 1997 (1) ALD 1. The same view had been reiterated by the learned Judge in *Shaik Omer Bin Ali Umodi v. Syed Yousuf Ali* 1997 (2) ALD 112.

17. However, in *Parepalli Pallalayya Vs. Kasagani Ramulu and others*, , a learned Single Judge of this Court differed with the view expressed in the latter two judgments.

18. Recently in *Podugu Jayalakshmi v. Shahjedi Begum* 2002 (2) ALD 506, a learned Single Judge of this Court has sought to distinguish Articles 58 and 65 of the Act and held that if the suit is for declaration of title over an immovable property, the period of limitation would be 12 years. But, inasmuch as the suit

was filed for declaration in that case in respect of a sale deed, Article 58 is held to be applicable.

19. Even the High Court of Orissa in *Gouranga Sahu and Others Vs. Bhaga Sahu and Another*, ; the High Court of Bombay in *Pravin Kamdar Vs. State of Maharashtra and others*, , and in *Mrs. Indira Bhalchandra Gokhale (deceased by LRs) Vs. Union of India and Another*, ; the High Court of Karnataka in *Seshumull M. Shah Vs. Sayed Abdul Rashid and others*, , and the High Court of Madras in *Muniammal v. Venkitammal* 1992 (2) Mad. LJ 425 have taken the same view.

20. The Law Commission in its 89th Report recommended for the amendment of Article 58 by adding the words "without seeking further relief after the word "declaration" in the first column of Article 58 so as to avoid any confusion. However, so far no amendment has been brought in by the Parliament as recommended.

21. The preponderance of authority which holds the view that in respect of declaratory suits pertaining to immovable property, the period of limitation is governed by Articles 64 and 65 but not Article 58 of the Act is in conformity with the Scheme of the Act, as discussed hereinabove.

22. The question seems to be a mixed question of law and fact, having regard to the matrix of the case as set out in the plaint. Per se if the suit is barred by limitation, there can be no difficulty for the Court to dismiss the suit on that ground, notwithstanding the absence of any plea in regard thereto inter alia in the written statement filed by the adversary but if the matter requires some evidence for effective adjudication of the point of limitation, the plaintiff cannot be non-suited at the threshold and it is only at the culmination of hearing of the suit, the point of limitation can be adjudicated upon. When that being the view, the principle that relief is barred by limitation and, therefore, amendment cannot be allowed, will not uniformly apply to all cases. Where the point of limitation is a mixed question of law and fact, the amendment can be allowed, appears to be the law on the point. I am reinforced in my above view by a judgment of the Apex Court in *Pirgonda Hongonda Patil Vs. Kalgonda Shidgonda Patil and Others*, , *Ragu Thilak D. John v. S. Rayappan* 2001 (2) ALD 31 (SC) : (2001) 2 SCC 472 and *Narne Rama Murthy v. Ravula Somasundaram* (2005) 6 SCC 614.

23. In ordinary course, I would have referred the matter to a Bench, having due regard to the divergence of the view expressed by this Court, but for the fact that the scheme of the Act and the division of the Schedule appended to the Act into various parts dealing with various categories of suits, appeals and applications, would clearly lead to an inescapable conclusion that in respect of suits pertaining to immovable properties, Article 58 of the Act has no application, I am of the considered view that there is no need to refer the matter to a Bench. The two judgments rendered by this Court in *N. Raghotham Rao's* case and in *Shaik Omer Bin Ali Umodi's* case (*supra*) having been rendered without noticing the earlier judgments of this Court to the contra are per incuriam.

24. A perusal of Rule 17 of Order 6 of the CPC shows that at any stage of the proceedings, the Court may allow either party to the proceeding to alter or amend the pleadings provided that such an amendment is necessary for the purpose of determining the real questions in controversy between the parties. Rule 17 has been amended under Act 22 of 2002. The amended provision reads as under :

Order VI Rule 17. Amendment of pleading :--The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

25. It is obvious from the amended provision that the wide discretion conferred upon the Court to allow either party to the proceedings to alter or amend his pleadings is now fettered by incorporating a proviso thereunder. Under the proviso, the Court shall not allow the application for amendment after the trial in the suit has been commenced. However, if the Court comes to the conclusion that despite due diligence, the party could not have raised the matter before the commencement of the trial, notwithstanding the stage at which the application has come to be filed, it may allow the application. Therefore, if the amendment is necessary for determining the real questions in controversy in between the parties inter se and despite due diligence the party could not seek amendment before the commencement of the trial in the suit, by exercising its discretion, the Court may grant leave to the parties to amend their pleadings suitably.

26. In the result, the civil revision petition fails and is dismissed at the threshold. No order as to costs.