

(2011) 07 MAD CK 0395

In the Madras High Court

Case No : C.R.P. (PD) No. 147 of 2009 and M.P. No. 1 of 2009

P.M. Syed Ahamed

APPELLANT

Vs

V.M. Salahudeen, V.M. Abuthah and V.M. Sirajudeen

RESPONDENT

Date of Decision : 28-07-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17
Limitation Act, 1963 — Article 64

Citation : (2011) 07 MAD CK 0395

Hon'ble Judges : K. Venkataraman, J

Bench : Single Bench

Advocate : M.M. Abdul Razack, for the Appellant; N.S.M. Md. Jafarulla, for R1 to R3, for the Respondent

Final Decision : Dismissed

Judgement

K. Venkataraman, J.—The Defendant in O.S. No. 4392 of 2007 before the learned VII Asst. Judge, City Civil Court, Chennai aggrieved over the order made under Order 6 Rule 17, CPC has come up with the present Civil Revision Petition.

2. The Respondents herein have laid the said suit against the Petitioner to declare that they are the owners of the suit property and for permanent injunction restraining the Petitioner herein from putting up any construction over the suit property. In the said suit, the Respondents have taken out an application in I.A. No. 15347 of 2008 for amendment of the pleadings. The said application came to be allowed by the Court below and the present revision is directed against the said order.

3. In the affidavit in support of the application for amendment, it has been pleaded by the Respondents herein that in the month of May 2008, the Petitioner herein attempted to put up a construction over the suit property and that has necessitated the Respondents to claim the relief of possession.

4. The learned Counsel appearing for the Petitioner strenuously contended that,

(i) The claim made in the plaint itself is barred by limitation and hence the amendment should not be allowed.

(ii) The Respondents herein have not claimed in their suit that possession is with the Petitioner and hence the relief of possession cannot be sought for by way of an application for amendment.

(iii) The amendment that has been sought for is clearly barred by limitation and hence the same cannot be allowed.

(iv) Grave injustice would be caused to the Petitioner, if the amendment is allowed.

5. The learned Counsel appearing for the Petitioner relied on the following decisions.

(i) S. Kuppusamy Vs. P.K. Subramani, P.K. Kandasamy, P.K. Kumaravel and P.K. Loganathan,

(ii) North Eastern Railway Administration, Gorakhpur Vs. Bhagwan Das (D) by Lrs., .

(iii) G. Elumalai Vs. G. Venkatesan and Others,

(iv) 2005 (5) CTC 619, Rameeza Beevi v. S. Mohammed Ibrahim.

(v) 2007 (3) TNLJ 289, Kasthuri Bai and Anr. v. Savithri and 35 Ors.

(vi) 1995 TNLJ S.C. 77, K. Raheja Constructions Ltd., v. Alliance Ministries and Ors.

(vii) 2006 (4) TNLJ 292, G. Babu v. K. Sundaram and Ors.

6. I have carefully considered the submissions made by the learned Counsel appearing for the Petitioner.

7.1. The first submission made by the learned Counsel appearing for the Petitioner is that the claim made in the suit itself is barred by limitation. I am of the considered view that whether the claim made in the plaint is barred by limitation or not can be tested only at the time of trial and not now. The application that came to be allowed by the Court below is an application filed by the Respondents under Order 6 Rule 17 Code of Civil Procedure. It is not an application filed by the Petitioner under Order 7 Rule 11 CPC or to reject the plaint as required under Order 6 Code of Civil Procedure.

7.2. In view of the above said circumstances, I am of the considered view that the plea that has been taken by the learned Counsel appearing for the Petitioner that the claim made in the suit itself is barred by limitation cannot be considered at this stage.

8.1. The next contention made by the learned Counsel appearing for the Petitioner is that the claim made in the application by way of amendment is

barred by limitation. I am afraid that the said contention of the learned Counsel appearing for the Petitioner also cannot be accepted. In the affidavit in support of the application, it is stated by the Respondents that in the month of May 2008, the Petitioner herein attempted to put up a construction over the suit property and that has necessitated the Respondents to file an application for amendment. Whether the said fact is true or not has to be tested only at the time of the trial. It is a common knowledge that the merits of amendment cannot be discussed or considered at the time of inception itself, when the application for amendment is decided.

8.2. Hence, the said contention of the learned Counsel appearing for the Petitioner is also rejected.

9.1. The next contention that has been put forth by the learned Counsel appearing for the Petitioner is that the claim is barred by limitation under Articles 64, 65 and 113 of the Limitation Act. No doubt, Articles 64 and 65 deal with the limitation for seeking possession of the immovable property and Article 113 deals with the period of limitation in any other suit. As regards Articles 64 and 65, the limitation prescribed under the Act is 12 years and the limitation prescribed under Article 113 is 3 years.

9.2. In the case on hand, as stated already, on the averments made in the affidavit in support of the application, prima-facie I am of the view that the amendment sought for is not barred by limitation. Any how the claim has to be decided at the time of trial.

10. That apart, it has been pleaded by the Respondents that in the month of May 2008, the Petitioner attempted to put up construction and that has necessitated the Respondents to file the said application. I am of the considered view that the Petitioner is at liberty to raise the said ground at the time of trial.

11.1. The first decision relied on by the learned Counsel appearing for the Petitioner is reported in S. Kuppusamy Vs. P.K. Subramani, P.K. Kandasamy, P.K. Kumaravel and P.K. Loganathan, . In the said decision, it has been held that the amendment that has been allowed after a lapse of more than the prescribed period of limitation cannot be entertained. In the case on hand, as stated already, the claim made in support of the application is that the Petitioner herein has attempted to put up a construction in the suit property in the Month of May 2008 in the suit filed in the year 2007. Hence, I am of the considered view that the said decision may not be of any use to the case of the Petitioner.

11.2. The next decision relied on by the learned Counsel appearing for the Petitioner is reported in North Eastern Railway Administration, Gorakhpur Vs. Bhagwan Das (D) by Lrs., . In the said judgment, the Hon"ble Apex Court has held that amendment that has been sought for can be allowed if it satisfies two grounds, namely, if it is not working injustice to the other side and if it is going to determine the real questions in controversy between the parties. In the case on hand, the amendment filed by the Respondents is for recovery of possession

which has to be decided only at the time of trial and not now. Hence, the said judgment also may not be of any use to the case of the Petitioner.

11.3. The next decision relied on by the learned Counsel appearing for the Petitioner is reported in G. Elumalai Vs. G. Venkatesan and Others, . It is the case where it was not pleaded that possession was taken over pending litigation and admittedly the possession was with the other side. In those circumstances, this Court held that such request for amendment cannot be entertained. Hence, the said judgment also may not be of any use to the case of the Petitioner.

11.4. The next decision relied on by the learned Counsel appearing for the Petitioner is reported in 2005 (5) CTC 619, Rameeza Beevi v. S. Mohammed Ibrahim. It is the case where, on facts it has been found by this Court that the suit has been filed in the year 1997 for declaration of title and recovery of possession, and the amendment was sought for in the year 2003, for cancellation of the sale deed and it was pleaded when the Petitioner thereon came to know about the document which was relied. Hence, on facts this Court came to the conclusion that the claim made by way of amendment is barred by limitation. However, in the given case on hand, such facts are not available and hence the said judgment may not be of any use to the case of the Petitioner.

11.5. The next decision relied on by the learned Counsel appearing for the Petitioner is reported in 2007 (3) TNLJ 289, Kasthuri Bai and Anr. v. Savithri and 35 Ors. That is the case where the suit has been filed in the year 1991 for the relief of permanent injunction and the Defendants have filed their written statement in the year 1994 itself. In the year 2001, the Plaintiffs thereon have filed an application for amendment. In such circumstances, this Court came to a conclusion that the claim made by way of amendment is barred by limitation and hence the amendment cannot be allowed. As stated already, the facts of the present case does not tally with the facts of the case referred to above and hence the said judgment also may not be of any use to the case of the Petitioner.

11.6. The next decision relied on by the learned Counsel appearing for the Petitioner is reported in 1995 TNLJ S.C. 77, K. Raheja Constructions Ltd., v. Alliance Ministries and Ors. That is the case, where the original suit was filed for the relief of permanent injunction and later after a lapse of seven years, an application came to be filed for amendment for relief of specific performance. In those circumstances, it has been held that the claim made by way of amendment is barred by limitation. Hence, the said judgment also may not be of any use to the case of the Petitioner.

11.7. Yet another decision relied on by the learned Counsel appearing for the Petitioner is reported in 2006 (4) TNLJ 292, G. Babu v. K. Sundaram and Ors. In the said decision, this Court has held that power under Order 6 Rule 17 CPC cannot be indiscriminately exercised to extend the period of limitation. As stated already, on facts of the present case it has been pleaded by the Respondents in the affidavit in support of the application for amendment that in

the month of May 2008, the Petitioner attempted to put up construction and that has necessitated the Respondents to file such an application. Hence, the said judgment also may not be of any use to the case of the Petitioner.

12. That apart, the Hon''ble Apex Court in the judgment reported in Usha Balashaheb Swami and Others Vs. Kiran Appaso Swami and Others, , has held that if the amendment of the pleadings result in causing grave injustice and irretrievable prejudice to the other side displacing him completely, the same cannot be entertained. However, in the case on hand, whether the suit itself is barred by limitation or not can be decided only at the time of the trial and not at the time of deciding the application for amendment.

13. In view of the above stated position, I am of the considered view that the Court below has rightly exercised its discretion in allowing the application for amendment made in I.A. No. 15347 of 2008 in O.S. No. 4392 of 2007, which does not require any interference by this Court, since I do not find any infirmity in the said order.

14. In fine, the Civil Revision Petition stands dismissed. Consequently, connected miscellaneous petition is closed. However, no order as to costs.

15. At this juncture, the learned Counsel appearing for the Petitioner submitted that the Petitioner shall be permitted to file additional written statement. It is needless to say that if an application for amendment is allowed, then the other side will naturally be entitled to file additional written statement. Hence, I am of the view that the Trial Court has to grant time for the Petitioner to file additional written statement.