

(2024) 01 KL CK 0072

In the High Court Of Kerala

Case No : Original Petition (C.) No.2410 Of 2021

Rajasekharan Nair

APPELLANT

Vs

Rajalekshmi

RESPONDENT

Date of Decision : 09-01-2024

Acts Referred:

Hindu Minority and Guardianship Act, 1956 — Section 8(3)
Specific Relief Act, 1963 — Section 34

Citation : (2024) 01 KL CK 0072

Hon'ble Judges : C.Jayachandran, J

Bench : Single Bench

Advocate : Ayyappan Sankar, S.Hridya, G.S.Reghunath, B.Ananthu

Final Decision : Disposed Of

Judgement

C.Jayachandran, J

1. The petitioner herein is the defendant in Ext.P4 suit, O.S. No.622/2011, pending before the Sub Court, Thiruvananthapuram. He is aggrieved by Ext.P9 order, which allowed an amendment to incorporate a relief for re-conveyance of the schedule property by specific performance of an agreement, on the ground that the relief stood barred by the law of limitation as on the date on which the amendment was sought for by Ext.P6 application. According to the petitioner/defendant, Ext.P9 is a cryptic order, with illogical reasoning and contrary to the law laid down by the Hon'ble Supreme Court, as regards permissibility of an amendment to incorporate a time barred relief.

2. Heard Sri.Ayyappan Sankar, learned counsel for the petitioner/defendant and Sri.G.S.Reghunath, learned counsel for the respondent/plaintiff.

3. The nature and character of Ext.P1 sale deed executed by the plaintiff in favour of the defendant is the issue involved in the suit. The subject suit was filed for a declaration that Ext.P1 sale deed dated 22.04.2009 is, in effect, a mortgage deed only. The plaintiff also sought for a prayer allowing her to pay off

the mortgage amount of Rs.13,00,000/- and to redeem and recover possession of the plaint schedule property. A permanent prohibitory injunction was also sought for, as the second prayer.

4. The plaintiff averred that the defendant is a money lender and that the plaintiff approached him for a loan of Rs.13,00,000/- in connection with the management of a school run by the plaintiff's sister; that the defendant demanded plaint schedule property to be offered as security; though the defendant initially agreed for execution of a mortgage deed, he changed his stand and insisted for a sale deed on the date fixed for execution of the document, with a specific undertaking that the defendant would re-convey the property when the loan amount is paid off, for which purpose, another deed was also executed on the same date. This Court may pause here for a moment to point out that the details of the said deed claimed to have been executed on the same date was not pleaded in the plaint. However, the same was produced along with the plaint as item no.2 to the list of documents, wherein it is seen referred to as a consent deed. It is essentially on the basis of the afore referred pleadings that the reliefs cited above were sought for. The suit was resisted by the defendant, contending that Ext.P1 is an absolute sale deed. As regards the execution of the consent deed on the date on which the sale deed was executed, the contention of the defendant is to the following effect:

"15. It is submitted that the sale deed though was proposed to be executed on 22.04.2009, the original of the title deed was not shown or rather handed over to this defendant till 21.04.2009. Thus on the said date this defendant asked about the same so as to prepare sale deed and to get himself convinced about the non encumbrance. During the said time the plaintiff demanded for an amount of Rs.2 lakhs so as to clear of the debt pertaining to the property so as to collect back the original of her title deed, after clearing off the debt due to some private person. This defendant was reluctant to hand over funds as claimed, due to the reason that the above facts were not disclosed til the said moment. Thus the plaintiff insisted for the defendants signature in the blank stamp paper brought by her, so as to convince the said creditor and to get release of the said title deed. Thus this defendant was caused to put signature in the blank stamp paper. After the execution of the sale deed and soon after the payment of sale consideration, this defendant demanded for the return of the consideration, this defendant demanded for the return of the said blank stamp paper, and then the plaintiff intimated that the same would be returned after settling the creditor. There after the plaintiff intimated that the same was torned off. This defendant came to understand about the fabrication and deception only when the same was produced in the prior suit OS 432/2010 on 11.06.2010."

The written statement was filed in the month of July, 2019.

5. Thereafter, on 20.10.2021, the plaintiff filed Ext.P6 amendment application seeking to incorporate a relief for re-conveyance of the schedule property by specific performance of the agreement dated 22.04.2009 (the one produced

along with the plaint and referred to as a consent deed in the list of documents). In the affidavit in support of the amendment application, the plaintiff averred that she is entitled to get specific performance of the agreement for re-conveyance dated 22.04.2009, which was produced along with the plaint, with necessary supporting pleadings in the plaint; and that the amendment is required only for clarity of pleadings and the relief.

6. The defendant (petitioner herein) filed a detailed counter affidavit, specifically contending that the application is filed to circumvent the legal provisions and the law of limitation, that it lacks bonafides, that it alters the very nature and character of the suit and that the amendment application is highly belated.

7. On an analysis of the rival contentions, the learned Sub Judge allowed Ext.P6 amendment application vide Ext.P9 order, holding that the redemption of the mortgage of the year 2009 is not barred by time and that the proposed amendments are necessary for a full and complete adjudication of the dispute between the parties. The learned Sub Judge also took stock of the fact that the trial has not commenced.

8. In the light of the legal proposition canvassed by the learned counsel for the petitioner/defendant, as enunciated in the judgments of the Hon'ble Supreme Court relied upon by the learned counsel, this Court is afraid whether Ext.P9 order will survive the scrutiny of law. A more or less similar situation was considered by the Hon'ble Supreme Court in *Vijendra Kumar Goel v. Kusum Bhuwania* [(1997) 11 SCC 457]. There, the declaration sought for was to the effect that a contract for sale is still subsisting and that the defendant is bound to execute and register the sale deed in respect of the schedule property in favour of the plaintiff. However, no further relief was sought for in the plaint for specific performance of the contract. Subsequently, an application for amendment was filed to incorporate a prayer for specific performance of the contract by the defendant, failing which the Court was called upon to execute and register the sale deed. The amendment refused by the trial Court was allowed by the High Court in revision. The relevant findings of the Hon'ble Supreme Court, which ultimately set aside the order of the High Court, are extracted here below:

"4. In the instant case the High Court appears to have proceeded on the basis that in the plaint the plaintiff-respondent has made out a case for specific performance and nothing new had been sought for by way of amendment. We have perused the plaint. We are unable to agree with the said view of the High Court. It is no doubt true that in the plaint the plaintiff-respondent has made a reference to the agreement and his having requested the appellant to execute the sale deed. But there is nothing in the plaint to show that the plaintiff-respondent was seeking specific performance of the contract. The suit, as framed, is a suit for declaration and injunction only. It was sought to be converted into a suit for specific performance by the plaintiff-respondent by way of amendment in the plaint in 1993 when the claim for specific performance had become barred by limitation."

9. As far back as in 1957, the Hon'ble Supreme Court laid down in *L.J. Leach & Co. Ltd. v. Jardine Skinner and Co.* [AIR 1957 SC 357] that the Court would as a rule decline to allow amendments, if a fresh suit on the amended claim would be barred by limitation on the date of the application. But that is a factor to be taken into account in exercise of the discretion as to whether amendment should be ordered, and does not affect the power of the court to order it.

10. On the aspect of the legal requirement to offer satisfactory explanation for the delay in seeking the amendment, the Hon'ble Supreme Court in *Shiv Gopal Sah v. Sita Ram Saraug i and others* [(2007) 14 SCC 120] held as follows:

" 11. We have gone through the amendment application carefully where we do not find any explanation whatsoever for this towering delay. We would expect some explanation, at least regarding the delay since the delay was very substantial. The whole amendment application, when carefully scanned, does not show any explanation whatsoever. This negligent complacency on the part of the plaintiffs would not permit them to amend the plaint, more particularly when the claim has, apparently, become barred by time.

12. It is quite true that this Court in a number of decisions, has allowed by way of an amendment even the claims which were barred by time. However, for that there had to be a valid basis made out in the application and first of all there had to be bona fides on the part of the plaintiffs and a reasonable explanation for the delay. It is also true that the amendments can be introduced at any stage of the suit, however, when by that amendment an apparently time-barred claim is being introduced for the first time, there would have to be some explanation and secondly, the plaintiff would have to show his bona fides, particularly because such claims by way of an amendment would have the effect of defeating the rights created in the defendant by the lapse of time. When we see the present facts, it is clear that no such attempt is made by the plaintiffs anywhere more particularly in the amendment application."

11. As has been done in the subject suit, when a mere declaration is sought for without seeking any consequential relief, the impact of the proviso to Section 34 of the Specific Relief Act, as also, on the permissibility of an amendment to incorporate a consequential relief at the appellate stage, the Hon'ble Supreme Court held in *Muni Lal v. Oriental Fire & General Insurance Co. Ltd. and another* [(1996) 1 SCC 90] that if the relief stood barred by limitation as on the date of application for amendment, granting such amendment to introduce the alternative plea of mandatory injunction is bad in law. In paragraph No. 6 of the judgment, the Hon'ble Supreme Court went on to hold that the alternative relief was available to be asked for, when the suit was filed, but not made. On such finding, the amendment sought for was declined. The legal position as regards the impermissibility to allow a highly belated amendment to incorporate a relief which is barred by the law of limitation and when the amendment sought for is not bonafide was again reiterated by the Hon'ble Supreme Court in *M. Revanna v. Anjanamma (dead) by legal representatives and others* [(2019) 4 SCC 332].

In *Vishwambhar & ors v. Laxminarayan* [AIR (2001) SC 2607], the plaintiffs maintained a suit on the premise that the alienation made by the mother/guardian without any legal necessity and permission of the competent Court were void. Realising the difficulty that such alienation is only voidable at the instance of the minor as per Section 8(3) of the Hindu Minority and Guardianship Act, 1956, the plaintiffs sought for an amendment to incorporate a prayer for setting aside the sale deed. However, by the time, the amendment was sought for, the relief to set aside the sale deed got barred by the law of limitation. The Hon'ble Supreme Court refused to act upon such amendment of the plaint and held that the same cannot come to the rescue of the plaintiff.

12. Coming to the facts at hand, the suit is of the year 2011, wherein the plaintiff remain contended by seeking a mere declaration that Ext.P1 document is not a sale deed, but only a mortgage deed, with a further prayer to redeem the mortgage and recover possession of the plaint schedule property. Ext.P6 application seeking amendment was filed only in the year 2021, that is to say, after a period of ten years. There is huge, inordinate and unexplained delay. As rightly pointed out by the learned counsel for the petitioner, no reason, whatsoever, is stated in the affidavit in support of Ext.P6 application for the inordinate delay caused, which conduct is squarely in the teeth of the dictum laid down in *Shiv Gopal Sah* (Supra). Secondly, this Court also takes note of the fact that the relief for specific performance of an agreement dated 22.04.2009 is hopelessly barred by the law of limitation, by the time Ext.P6 application was filed in the year 2021. This Court notice that though the written statement was filed in the year 2019, the fact sought to be introduced by way of amendment is not something which came to the notice of the plaintiff by virtue of the contentions in the written statement. Instead, the same was very much within the knowledge of the plaintiff, about which there is a reference in the plaint, besides producing the agreement – which is now sought to be specifically performed – along with the plaint. As held in *Vijendra Kumar Goel* (Supra), there is nothing in the plaint indicating that the plaintiff was seeking a relief for specific performance of the said agreement, though the factual aspects which may lead to such a relief was pleaded in a curt manner in the plaint, which could have been condoned in view of the fact that the very agreement was produced along with the plaint, thus forming part of the pleadings, had an application for amendment was preferred within a reasonable time. The same having not been done, the impugned Ext.P9 order is in the teeth of the dictum laid down in *Vijendra Kumar Goel* (Supra). This Court also notice that the nature and character of the suit, where a declaration - that the deed in question is, in fact, a mortgage - is sought for and that of a suit which seeks specific performance are also considerably different. *Muni Lal* (Supra) is also on all fours to the issue under consideration.

For the afore-said reasons, Ext.P9 order cannot be sustained and the same is, therefore, set aside. Ext.P6 application for amendment will stand dismissed. Learned Sub Judge will proceed with the suit based on the original pleadings.

This being a suit of the year 2011, there will be a direction to the learned Sub Judge to expedite the trial and dispose of the matter at the earliest, at any rate, within a period of six months from the date of receipt of a copy this judgment. It is clarified that this Court has not opined anything on the sufficiency or otherwise of the existing relief sought for. The learned Sub Judge will dispose of the suit untrammelled by any of the observations made in this judgment.

This Original Petition is disposed of accordingly.