
(2002) 09 MAD CK 0114

In the Madras High Court

Case No : C.R.P. No. 649 of 2001 and C.M.P. No. 3484 of 2001

Ulaganathan

APPELLANT

Vs

Kumarasamy Chettiyar

RESPONDENT

Date of Decision : 24-09-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (2002) 09 MAD CK 0114

Hon'ble Judges : K. Gnanaprakasam, J

Bench : Single Bench

Advocate : V.R. Anna Gandhi, for Sarvabhauman Associates, for the Appellant;
Hema Sampath, SC, for the Respondent

Final Decision : Dismissed

Judgement

K. Gnanaprakasam, J.—The revision petitioner is the defendant in O.S.No.296 of 1990 on the file of the learned District Munsif Court, Jeyankondam. The plaintiff's suit was decreed on 29.4.1993 and the revision petitioner has preferred an appeal and the same is pending in A.S.No.158 of 1993 on the file the learned Subordinate Court, Ariyalur. In the said appeal, the revision petitioner has filed an application in I.A.No.1 of 1999 praying the Court to permit him to file an additional written statement and the same came to be dismissed by an order dated 27.11.2000. Aggrieved by the same, the defendant has preferred this civil revision petition.

2. The revision petitioner, in the affidavit filed in support of the petition seeking permission to file additional written statement, has stated that he has specifically pleaded that the suit has been filed after a lapse of 12 years and he was in possession of the suit properties even long prior to the notice issued by the plaintiff. By mistake and oversight, he failed to raise specific important plea of limitation, which he was advised that he cannot agitate without any plea under law; that in all to put an end to unnecessary legal contention and with regard to the plea of limitation, he wants to file an additional defence by way of additional

written statement. It is also specifically stated in the affidavit that "By allowing such plea, I am not praying for leading any evidence also. The evidence already adduced will be sufficient for deciding the legal question."

3. The said petition was resisted by the plaintiff. He has also filed a counter, wherein it is stated that the defendant is trying to introduce a new set of facts, which is inconsistent with his earlier pleadings. The trial court relied upon a judgment rendered by this Court in a case of H. RAMACHANDRA RAO VS. A.MOHIDEEN reported in 2000 1 LW 420 (S.S. Subramani, J), wherein this Court relied upon the earlier decision reported in Nanjan Vs. Selai and Others, , where it was held as follows:

"If the party wants to file an additional written statement, he has to file a petition stating the reason why he failed to say these things in the original written statement, and what excuse there is for allowing him to file an additional written statement at that stage. Then the other side has to be given an opportunity to oppose the petition and contend that such additional written statement should not be entertained at that stage. Then the Court has to give its decision as to whether the additional written statement is to be admitted or not."

Relying upon that observation, this court, in the said case, came to a conclusion that the reasons, set forth in the affidavit, are not sufficient to allow the petition.

4. The learned Advocate for the revision petitioner in this case has pointed out that he has raised the plea of adverse possession/prescription in paragraph 12 of the written statement, and inspite of that he has got some apprehension that the additional written statement has got to be filed to raise the question of limitation as contemplated u/s 58 of the Limitation Act, and such apprehension appears to be unnecessary. Section 3 of the Limitation Act also states "Subject to the provisions contained in Sections 2 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed although limitation has not been set up as a defence." As such, the question of limitation can be raised even without necessary pleadings and the same is not barred under law. The only apprehension of the revision petitioner is that he will be prevented from raising the question of limitation in the appeal, and such apprehension is unwarranted as it has been pointed out, supra. In fact, in this case, the revision petitioner has raised the plea of limitation and the said question was considered by the trial court, and inspite of that the suit was decreed. It is always open for the revision petitioner/defendant to raise such a ground in the appeal and he would not definitely be precluded from raising such a ground in the appeal as he has already raised in the written statement itself. That in order to obviate the unnecessary apprehension of the revision petitioner, it is hereby made clear that the revision petitioner/defendant is entitled to raise the plea of limitation before the lower appellate court, if he chooses to do so.

5. The Civil revision petition is dismissed with the above observation. No costs. Consequently, connected C.M.P. is also dismissed.