

(2004) 10 MAD CK 0066

In the Madras High Court

Case No : Civil Revision Petition (P.D.) No. 1102 of 2004 and CMP. No. 10855 of 2004

Usha Ranganathan and Others

APPELLANT

Vs

Arulmighu Anjaneyaswamy Thirukoil, Rangarao and
Krishnamoorthy

RESPONDENT

Date of Decision : 01-10-2004

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2004) 10 MAD CK 0066

Hon'ble Judges : S.R. Singharavelu, J

Bench : Single Bench

Advocate : P. Valliappan, for the Appellant; T. Murugamanickam, for the Respondent

Judgement

S.R. Singharavelu, J.—This civil revision petition arises against the order dated 29.03.2004 in I.A.No. 184 of 2004 in O.S.708 of 1998

passed by the I Additional District Munsif, Salem, in having allowed an application for amending the prayer of the suit.

2. Originally, a suit was filed for bare injunction and the plaint was presented on 29.07.1998. The revision petitioners, who were D4 to D8 in the

suit, have filed a written statement on 06.09.2000 stating that they have put up construction in the suit property even prior to the filing of the plaint,

which was in July 1998. Subsequently, on 29.01.1994, after a lapse of more than three years since filing the written statement, wherein the new

averment of having constructed a building in the suit property by the revision petitioners was made, the 1st respondent / plaintiff filed an application

seeking amendment of the prayer from bare injunction to mandatory injunction and removal of the construction.

3. Learned counsel for the revision petitioners submitted that inasmuch as D3 had mentioned in the written statement in September 2000 as if the

disputed construction had been put up by him even earlier to July 1998, the date of plaint, the plea of amendment of the prayer in the suit into one

for mandatory injunction and removal of construction made through the interlocutory application dated 29.01.2004 by the plaintiff is time barred.

As per Article 113 of Limitation Act, a suit ought to have been filed within three years from such disputed construction. This will hold good if what

all averred in the written statement is taken as true. We cannot at this stage approve the correctness of the pleadings made in the written statement

about the period of disputed construction. We cannot also accept such plea of revision petitioners in their written statement, simply on the ground

no rejoinder was filed by the 1st respondent / plaintiff soon after the filing of the written statement by the revision petitioners. As a matter of fact,

one can decide the issue only based upon the evidence to be let in.

4. Again, if we refuse such amendment of plaint, which prima facie seem to be reasonable and only triggered by the subsequent averment made by

the revision petitioners in their written statement, then it may lead to multiplicity of proceedings and so long as the amendment really subserves the

ultimate cause of justice and to avoid further litigation, we can allow the same. The dominant purpose of allowing the application is to minimize the

litigation. In this particular case, the 1st respondent / plaintiff had initiated action for grant of an injunction and subsequently when some construction

was made by the revision petitioners in the suit property, then only he can raise up to the occasion and seek for a proper relief to which he was

advised and that has been done in this case. To mention again we cannot now decide the correctness of the inter se dispute between the parties

and that can be done only after letting of evidence.

5. Learned counsel for the revision petitioners submitted a case law in this respect reported in T.N. Alloy Foundry Co. Ltd. Vs. T.N. Electricity

Board and Others, , in which reliance was placed upon L.J. Leach and Company Ltd. Vs. Jardine Skinner and Co., , wherein it was held that the

Court 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. It

was held in T.N. Alloy Foundry Co. Ltd. Vs. T.N. Electricity Board and Others, as

follows:-

.... 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"".

6. Learned counsel for the 1st respondent / plaintiff also relied upon the case law reported in Pankaja and Another Vs. Yellappa (D) by Lrs. and

Others, , wherein earlier case laws have been dealt with and the law was laid that there is no absolute rule that in every case where a relief is

barred because of limitation, an amendment should not be allowed. It was held that discretion in such cases depends upon the facts and

circumstances of each case. The jurisdiction to allow or not to allow an amendment being discretionary the same will have to be exercised in a

judicious evaluation of the facts and circumstances in which the amendment is sought.

7. Having regard to the circumstances and facts available in this case and in order to avoid multiplicity of proceedings, we have to approve the

allowance of the amendment as done by the trial court with a slight modification that there can be a cost of Rs.1000/= payable by the plaintiff to

D4 to D8 (revision petitioners) in the suit within a month inasmuch as this amendment should have been taken even earlier i.e.immediately after

06.09.2000 when the fact of construction of revision petitioners / D4 to D8 in the suit property was brought out in the written statement. The

amendment may not originate from the date of plaint and it has to take effect only from the date of application for amendment, viz., 29.01.2004.

The issue of limitation also will be framed by the trial court and dealt with according to law. Inasmuch as evidence on the side of the plaintiff is

almost over, the trial court is directed to dispose of the suit within three months from the date of receipt of a copy of this order.

8. With this modification, the interim order granted is confirmed on payment of costs mentioned supra and this revision petition is ordered

accordingly. No costs. Consequently, connected pending CMP, is closed.