

S.Manoharan Vs. Karunamurthy

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Court : Chennai

Decided On : Jun-27-2013

Judge : K.Ravichandrabaabu

Appellant : S.Manoharan

Respondent : Karunamurthy

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED :

27. 06.2013 Coram The Hon'ble Mr. Justice K.RAVICHANDRABAABU C.R.P.(NPD) No.2557 of 2012 and M.P.No.1 of 2011 S.Manoharan ... Petitioner Vs. Karunamurthy ... Respondent Civil Revision Petition filed against the fair and decretal order dated 27.2.2012 made in I.A.No.12 of 2012 in A.S.No.161 of 2012 on the file of the Additional District Judge, Fast Track Court No.III, Coimbatore. For Petitioner :- Ms.P.T.Asha for M/s.Sarvabhauman Associates For Respondent :- Mr. V.Venkatasamy

ORDER

This Civil Revision Petition is filed against an order made in I.A.No.12 of 2012 in A.S.No.161 of 2012 on the file of the Additional District Judge, Fast Track Court No.3 Coimbatore, wherein and whereby the said application filed by the respondent herein, under Order 6 Rule 17 CPC, seeking for amendment of the plaint, was allowed.

2. The respondent herein filed a suit in O.S.No.1507 of 2001 on the file of the Sub Court, Coimbatore against the petitioner herein seeking for specific performance of an agreement of sale dated 19.12.1997. The said suit, after contest, was dismissed by the trial Court on 13.4.2007 by holding that the plaintiff did not take any steps to get the sale deed executed within the time stipulated in the suit agreement. It was also found by the trial Court that the endorsement made in the suit agreement under Ex.A4 dated 10.12.1998 extending the period of agreement is not acceptable as the power of attorney of the plaintiff did not have any such power to make such endorsement and as such the same will not bind the defendant. Aggrieved against the said judgment and decree, the respondent herein filed an appeal before the Additional District court, Coimbatore in A.S.No.161 of 2007. Though the said appeal was originally dismissed for default on 28.10.2010, the same was subsequently restored by an order made in I.A.No.642 of 2011. Thereafter, the respondent herein filed I.A.No.12 of 2012 on 28.3.2012, praying for amending the plaint to seek an alternative relief of refund of advance money of Rs.2,50,000/-. The said application was resisted by the petitioner herein by filing a counter.

3. It is the contention of the petitioner that the alternative relief sought by way of amendment is barred by limitation and therefore the amendment petition is not maintainable. The Court below allowed the application by observing that the amendment of the pleadings can be granted at any stage of the proceedings as per Section 22 of the Specific Relief Act and therefore the question of limitation will not arise. However, the Court below while allowing the application, directed payment of Rs. 500/- as cost payable to the petitioner herein. The Court below has passed the said order on 16.2.2012 and thereafter when the matter was again taken up on 27.2.2012, the petition was allowed by recording the fact that the cost of Rs.500/- was deposited by the respondent herein. Aggrieved against the said order of the Court below, the present Civil Revision Petition is filed before this Court.

4. Ms.P.T.Asha, learned counsel appearing for the petitioner submitted that when the alternative relief sought to be introduced by way of amendment is barred by limitation, the Court below has erred in allowing the application. According to the

learned counsel, when such alternative relief could not be made even on the date of filing of the suit since such relief was barred by limitation even at that time, the same cannot be introduced by way of amendment that too at the appellate stage. Under the agreement dated 19.12.1997 only one year time limit was given for effecting the sale deed. When the suit was filed in December 2001, the time limit of one year was already over and therefore the relief of specific performance as well as the alternative relief sought to be introduced by way of amendment were barred by limitation. Learned counsel also pointed out that the extension of time granted by the power agent of the defendant was without there being any specific power to that effect and this aspect has also been taken note of by the trial Court. Learned counsel also submitted that Section 22 of the Specific Relief Act is not applicable to the present case in view of the fact that the suit has already been dismissed.

5. Per contra, the learned counsel Mr.V.Venkatasamy appearing for the respondent submitted that the suit was not dismissed on the ground of limitation but on the ground that the plaintiff did not take any steps to get the sale deed executed within the time prescribed in the sale agreement. It is his further contention that when the suit agreement was executed on 19.12.1997, the suit filed on 18.12.2001 was well within three years period and there was no objection raised by the defendant against the maintainability of the suit on the question of limitation in the written statement. No such issue was also framed by the trial Court. Therefore, the limitation was not an issue in the said suit and consequently the same cannot be raised by the petitioner in the present proceedings. He also submitted that Section 22 of the Specific Relief Act is a special enactment and overrides Order 6 Rule 17 CPC and therefore the respondent is entitled to seek the alternative relief as contemplated under Section 22 of the said Act. The learned counsel further submitted that what is under challenge in the Civil Revision Petition is not against the original order made in I.A.No.12 of 2012 dated 16.2.2012 and on the other hand, it is only against the consequential order dated 27.2.2012. Therefore the Civil Revision Petition is not maintainable.

6. Heard the learned counsel appearing on either side.

7. The point for consideration in this Civil Revision Petition is as to whether the Court below is justified in allowing the amendment petition, when the petitioner herein has resisted the same by contending that the alternative relief sought to be introduced by way of amendment is barred by limitation ?.

8. In this case, there was an agreement of sale between the parties dated 19.12.1997. Based on such agreement of sale, the respondent herein as the plaintiff filed the said suit for specific performance. It is the specific case of the plaintiff that the power of attorney of the defendant requested further 9 months period for performance of the contract and demanded an additional advance of Rs. 50,000 and on 10.12.1998 the plaintiff paid the said sum. Thus, it is pleaded by the plaintiff that the time was extended by another nine months from 10.12.1998 for execution of the sale deed and an endorsement was also made to that effect in the agreement for sale. It is specifically pleaded in the plaint at paragraph 7(a) that the limitation for the suit starts to run from 10.9.1999, in view of the endorsement made in the agreement on 10.12.1998 extending the period by 9 months.

9. To the above contention of the plaintiff made in the plaint, the defendant in his written statement has denied that the suit agreement dated 19.12.1997 as well as the power of attorney dated 18.12.1997 are not at all true transactions intended by the defendant with the object of subjecting him to any liability of alienation other than a loan liability. It is also admitted by the petitioner that both the documents were registered before the concerned Registrar Office. The defendant also specifically denied the receipt of Rs.50,000/- from the plaintiff on 10.12.1998. However, in so far as the specific plea raised by the plaintiff in the plaint at paragraph VII(a) with regard to the question of limitation is concerned, the defendant, while denying such allegations at paragraph 7 of his written statement, has not stated specifically that the suit is barred by limitation. It is only contended by the defendant that there was no agreement of sale and therefore there is no question of readiness or willingness on the part of the plaintiff. It is stated by the defendant that he had not empowered any one to act as his power agent and it is not true that the said power of attorney had received any further advance and extended the time for performance of the sale agreement.

10. Upon considering these pleadings as well as the evidence let in by both sides, the trial Court dismissed the suit. A perusal of the judgment of the trial Court would show that the question of limitation was not raised as an issue and the Court below has also not given any specific finding as to whether the suit was filed within the period of limitation or not. The finding of the trial court would only show that it had dismissed the suit only on the ground that the plaintiff did not take any steps within the time prescribed in the suit agreement. Not taking any steps within the time stipulated in the suit agreement is one thing and not filing the suit within the period of limitation is another thing. Thus, it is crystal clear that the question of limitation was not raised by the defendant in the written statement and not an issue framed by the trial Court while deciding the lis between the parties. When that being the position, let us consider as to whether the plaintiff, after filing the appeal before the appellate court, is entitled to file the amendment petition after a period of nearly five years from the date of dismissal of the suit and filing of the appeal to include the alternative relief of refunding the advance amount.

11. No doubt, at this juncture, it is to be noted that when an amendment of the plaint seeking to introduce a new or alternative relief is sought for, certainly the Court has to see as to whether such new or alternative relief sought to be introduced by way of amendment is barred by limitation or not. Then the question that would arise for consideration is as to when the period of limitation commences and ends. Answer to such question can not be uniform in all cases and on the other hand it depends upon facts, circumstances and the relief sought for in each case. In so far as the starting point of limitation is concerned there cannot be any doubt that it commences from the date on which the right to sue for such relief accrues. Here again, the date of accrual of such right would vary from facts and circumstances of each case. For instance, in a suit for declaration, if it is admitted by the plaintiff that the possession is with the defendant, then the right to sue for the relief of possession was also available to the plaintiff on the date of filing of the suit for declaration itself. If such relief of possession is sought by way of amendment at a latter point of time, then the plaintiff is bound to explain and satisfy that such relief sought by way of amendment is not barred by limitation. Thus, a right already accrued has to be exercised within the period of limitation. But the same principle cannot be applied to a relief, if such relief is sought as an

alternative relief. Certainly 'relief' and 'alternative relief' in a suit are not sought under one and the same circumstances and cause of action. The plaintiff may pray a relief by treating it as a main relief. He may also seek for an alternative relief if the Court comes to the conclusion that the main relief sought could not be granted. Thus, the right to claim such alternative relief may commence or accrue to the plaintiff not only at the time of filing the suit and also at the time when the Court declines the main relief to the plaintiff.

12. Keeping this in mind, if we take the case of Specific performance suit, the plaintiff will normally seek for specific performance and in some cases there will be an alternative prayer also for refund of advance money. Such alternative prayer is sought for usually by contending that the same may be granted in case the court declines the main relief of specific performance. Therefore, if the suit for specific performance is filed within the period of limitation and got dismissed on the ground that the plaintiff was not ready and willing, then the alternative relief for refund of advance money could be sought for at the appellate stage by amending the plaint, provided such application for amendment is filed within the period of limitation from the date of dismissal of such suit. Because of such dismissal, the defendant gets a right to file an appeal against the rejection of main relief and also a right to ask for an alternative relief. Applying this principle to the facts of the present case, it can be safely concluded that the alternative relief of refund of advance amount sought for by way of amendment is hopelessly barred by limitation. The suit came to be dismissed on 13.4.2007 and the appeal was filed on 3.12.2007. But the amendment petition was filed nearly after five years i.e. on 3.1.2012 when such right to seek alternative relief had accrued and further crystalised to the plaintiff on the date of dismissal of the suit itself. Thus, having not filed an application within three years from the date of dismissal of the suit, the relief sought in the amendment petition is undoubtedly barred by limitation.

13. The Hon'ble Supreme Court in a decision reported in 2009 (10) SCC84(Revajeetu Builders and Developers Vs. Narayanaswamy and Sons and Others) while considering the scope of amendment of pleadings has held at paragraph 63 as follows: VERNACULAR (TAMIL) PORTION DELETED FACTORS TO BE TAKEN INTO CONSIDERATION WHILE DEALING WITH APPLICATIONS FOR

AMENDMENTS:

63. On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment. (1) Whether the amendment sought is imperative for proper and effective adjudication of the case?. (2) Whether the application for amendment is bona fide or mala fide?. VERNACULAR (TAMIL) PORTION DELETED (3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money; (4) Refusing amendment would in fact lead to injustice or lead to multiple litigation; (5) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case?. and (6) As a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.". (emphasis supplied) From the above decision of the Apex Court in the case of Revajeetu Builders and Developers, it is seen that if a fresh suit on the amended claims would be barred by limitation on the date of the application, then the Court should decline amendments.

14. Keeping in mind the above said legal position, if the facts and circumstances of the present case are considered, undoubtedly, it shows that the alternative relief for refund of the advance amount is clearly barred by limitation on the date of the application seeking for amendment. No doubt the question of limitation is a mixed question of fact and law. But at the same time based on the admitted facts, if the Court can come to an irresistible conclusion that the relief sought for by way of amendment is barred by limitation on the date of the application, then there would be no purpose in allowing the amendment petition. Therefore, when the plaintiff in this case even by way of filing a separate suit was not entitled to seek for the refund of the advance amount from the defendant as on the date of filing of the amendment petition, in view of the fact that such relief is barred by limitation, certainly, he is not entitled to seek such relief by way of amending the plaint in the present suit as well. When the relief sought for is undoubtedly barred by limitation then permitting amendment would only be an empty formality as it is ultimately not going to serve any purpose.

15. In this case, the suit came to be dismissed on 13.4.2007. The appeal was filed by the petitioner herein in the year 2007 itself. However, the present application seeking for amendment came to be filed only in the month of January 2012 i.e. nearly after five years from the date of dismissal of the suit. From these facts and circumstances, it could be seen that the petitioner has not availed the remedy of law within the time frame as available to him under the law and on the other hand he has chosen to file the present application after five years from the date of dismissal of the suit which shows that there is no bonafide on the part of the petitioner. It is also well settled proposition of law that the Court cannot extend the period of limitation, if otherwise the relief sought for is barred under the law of limitation.

16. The learned counsel for the respondent strongly relied upon Section 22 of the Specific Relief Act, 1963 and contended that the proviso to Section 22 empowers the plaintiff to claim the alternative relief at any stage of the proceedings by amending the plaint. A bare perusal of Section 22 of the Specific Relief Act, 1963 would show that it deals with a person ".suing for specific performance".. No doubt, the said provision of law empowers the plaintiff to seek for a relief at any stage of the proceedings, which he has not claimed originally. But, here the question is whether the respondent as appellant is entitled to claim protection under Section 22 and to contend that the amendment is permissible. As already pointed out, Section 22 deals with ".any person suing for specific performance". that means a plaintiff during the pendency of a suit for specific performance. The proviso also makes it clear that such plaintiff can be allowed to amend the plaint to include such relief which he has not claimed originally. Here again, the phrase ".at any stage of the proceeding". contemplated under the proviso, if read along with the phrase ".any person suing for specific performance". contemplated under sub-section (1) of Section 22 would make it clear that it could be applied only during the pendency of the suit for specific performance and not after a decree is made therein or at the appellate stage. Even assuming that Section 22 is attracted, still the question of limitation can be gone into by the Court to find out as to whether the relief sought by way of amendment is barred by limitation or not. Therefore, the learned counsel for the respondent is not justified in his contention raised in this regard.

17. Thus, by considering all these facts and circumstances and also the case law as discussed supra, I am of the view that the order of the court below in allowing the amendment petition is not sustainable in law and consequently the same is liable to be set aside. Accordingly, the Civil Revision Petition is allowed and the order made in I.A.No.12 of 2012 in A.S.No.161 of 2012 on the file of the Additional District Judge, Fast Track Court No.III, Coimbatore is set aside. Consequently, the connected M.P. is closed. No costs. krr To The Additional District Judge, Fast Track Court No.III Coimbatore

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