

Kalavathi Vs. Chitra

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SooperKanoon Citation : sooperkanoon.com/782933

Court : Chennai

Decided On : Feb-20-1998

Reported in : 1998(1)CTC529; (1998)IIMLJ508

Judge : P. Sathasivam, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) -- Order 6, Rule 17; [Limitation Act, 1963](#), -- Schedule -- Article 65

Appeal No. : C.R.P.No. 1874 of 1997 and C.M.P.No. 9485 of 1997

Appellant : Kalavathi

Respondent : Chitra

Advocate for Def. : Mrs. P. Vijayalakshmi,;Advocate for Mr. P. Srinivas

Advocate for Pet/Ap. : Mr. V. Raghavachari, Adv.

Disposition : Petition allowed

Judgement :

ORDER

1. Aggrieved against the order in I.A.No.2 of 1997 in O.S.No.1434 of 1990 on the file of District Munsif, Dindugul, the plaintiff has filed the present revision. He has filed I.A.No.2 of 1997 for amendment of the plaint. By the impugned order dated 18.1.97, the learned District Munsif dismissed the said petition, against which the

petitioner has filed the present revision.

2. Originally the plaintiff has filed O.S.1434 of 1990 praying for a decree for permanent injunction restraining the defendant from constructing any lavatory in the suit property. The said suit was filed in the year 1990. It is seen that in the written statement filed by the respondent/defendant on 1.11.96 he has disputed the claim of the plaintiff. In such circumstance, the petitioner herein has filed the present I.A.No.2 of 1997 in the said suit for amendment of the plaint, namely, instead of the prayer for permanent injunction, she sought for the relief of declaration and permanent injunction in respect of the suit property. The said application was filed on 20.12.96. Since the said application was resisted, I have carefully perused the plaint, present petition for amendment, affidavit the counter affidavits filed by both parties. It is true that when the plaintiff filed the suit in the year 1990 he has prayed only for bare injunction. It is the case of the petitioner that after filing the written statement, in view of the averments in paragraphs 4 and 5 of the statement, she has to seek necessary amendment and include the prayer for declaration. As stated earlier, the written statement was filed only on 1.11.96 and within a period of 2 months the petitioner has filed the present petition for amendment. Hence the said petition cannot be rejected on the ground that the same is belated.

3 The learned Judge has also given another reason, namely, inasmuch as the suit having been filed in the year 1990, the present application for amendment, which was filed in the year 1996, is hopelessly barred by limitation. According to him, the same ought to have been filed within 3 years from the date of action. The said conclusion of the Court below cannot be sustained, since claim in respect of immovable properties, as per Article 65 of the Limitation Act, the period of limitation is 12 years. In such a circumstance, the conclusion arrived at by the Court below is erroneous and the same is liable to be set aside. I have already concluded that there is no delay on the part of the plaintiff in filing the present application for amendment, since the defendant herself had filed her written statement only on 1.11.96, i.e., after a lapse of six years.

4 It is settled law that amendment not changing the nature of the suit and not affecting the rights of the parties has to be allowed in the interests of the parties concerned. In this regard, the decision of this Court reported in Lakshmanan v. Velliyan and others 1997 (1) L.W. 304 (P. Sathasivam, J.,) is very much relied on. A careful scrutiny of the entire materials would show that by allowing the amendment petition no injury or injustice would be caused to the defendant. Even after the amendment as claimed by the plaintiff, it is open to the defendant to raise all her objections including the plea of limitation if available.

5 Looking at any angle, the order passed by the Court below dismissing the application for amendment cannot be sustained. The Court below has committed an error in holding that the present claim of the plaintiff is also barred by limitation. Both the reasons, namely, the application is barred by limitation and the same is belated cannot be sustained for the reasons stated above. Accordingly, the order of the Court below dated 18.1.1997 in I.A.No.2 of 1997 is set aside. The said application is ordered as prayed for. The court below is directed to dispose of the suit after giving an opportunity to the defendant to file additional written statement, if any, in accordance with law. New result, civil revision petition is allowed. No costs. The interim stay granted in C.M.P.No.9485 of 1997 is vacated.