

Pakkirisamy Vs. S. Raman

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SooperKanoon Citation : sooperkanoon.com/828711

Court : Chennai

Decided On : Jul-01-2003

Reported in : (2003)3MLJ338

Judge : K. Gnanaprakasam, J.

Acts : [Limitation Act, 1963](#) - Schedule - Article 54

Appeal No. : C.R.P. No. 902 of 2003 and C.M.P. No. 5702 of 2003

Appellant : Pakkirisamy

Respondent : S. Raman

Advocate for Pet/Ap. : P. Valliappan, Adv. for ;Sarvabhauman Associates

Disposition : Petition dismissed

Judgement :

ORDER

K. Gnanaprakasam, J.

1. The respondent/plaintiff filed a suit for permanent injunction and for costs. It is stated that during the pendency of the suit, on 19.08.1999, the petitioner herein who is the defendant in the suit, induced his daughter, son-in-law, Padmavathy and also Maha to trespass into the suit property and they have also laid foundation

and the same was reported to the police. The plaintiff filed an application in I.A. No. 561 of 1999 against the defendant for contempt.

2. It is also stated that the defendant put up a bathroom and in order to prove the act committed by the defendant, the plaintiff filed an application for appointment of Advocate Commissioner who had inspected the suit property and found out that the suit survey number was wrongly given and the correct suit survey number is 582/28 and as the defendant put up bath room, latrine, septic tank, the plaintiff filed an application to amend the plaint. These are the averments set out in the affidavit filed in support of the petition by the plaintiff to amend the plaint.

3. The defendant resisted the said petition on the ground that the plaintiff is trying to alter the cause of action and introduce new and inconsistent cause of action which is time barred. It is also stated that the plaintiff is not entitled to amend the plaint and he is at liberty to withdraw the suit and file a fresh suit.

4. The Trial Court, having taken into consideration of all the aspects of the case, came to the conclusion that the amendment is necessary and allowed the petition. Aggrieved by the same, the defendant has preferred the revision petition.

5. Learned advocate appearing for the revision petitioner would submit that the application filed by the respondent to amend the plaint is not maintainable and the said application sought for is time barred and the order passed by the Trial Court is not proper and correct.

6. The above petition is posted for admission. The Court directed the learned advocate for the petitioner to file the report of the Advocate Commissioner and the same was filed into the Court on 30.06.2003. On going through the report filed by the Advocate Commissioner, it appears that the Advocate Commissioner inspected the suit property on 06.07.2002 and thereafter he has filed the report. But, however, the date of filing of the report is not stated in the report.

7. It is seen from the typed set of papers filed by the petitioner, the affidavit and petition, for the appointment of advocate which are available at pages 9 and 11 shows that they were filed on 14.11.2002 i.e. only after the inspection of Advocate

Commissioner in this case. It is evident that only after the report filed by the Advocate Commissioner, the plaintiff was able to establish the trespass committed by the defendant. Thereafter only, it enabled the plaintiff to file an application for amendment within about four months from the date of filing of the report. In fact, the defendant had chosen to deny the trespass said to have been committed by him. In the said context only, the plaintiff, appears to have filed an application for appointment of Advocate Commissioner and the Advocate Commissioner also inspected the property on 14.11.2002 and after filing the report, the plaintiff filed an application to amend the plaint.

8. It has been stated in the affidavit filed in support of the petition to amend the plaint that only during the course of inspection, it came to be known that the survey number given by the plaintiff is not correct as some other survey number was shown in the plan by the surveyor and therefore the plaintiff sought to amend the survey number also. As the defendant put up bathroom, latrine and septic tank, the plaintiff has also prayed for mandatory injunction for the removal of the same.

9. Learned advocate appearing for the petitioner contends that the suit was filed in the year 1998 and the trespass alleged to have taken place on 19.08.1999, the plaintiff should have filed an application within a period of three years from that date, but whereas the application to amend the plaint was filed only on 14.11.2002 which is beyond the period of three years and hence it is barred by time.

10. It is true that the plaintiff filed the application for amendment on 14.11.2002, but the alleged trespass of the defendant on 19.8.1999 was not admitted by the defendant, and only in the said circumstances, the plaintiff was forced to file an application for appointment of Advocate Commissioner and an Advocate was appointed as Commissioner who had inspected the suit property on 06.07.2002 and filed the report thereafter. After filing of the report, the plaintiff was able to establish the trespass committed by the defendant and only in the said circumstances, the plaintiff filed the application for amendment on 14.11.2002. To complete the date of trespass, he can safely take either the date of inspection on 06.07.2002 or the date on which the Advocate Commissioner filed the report,

which is not available. But the petition was filed within four months from the date of inspection and therefore it cannot be contended that the petition is barred by limitation.

11. Learned advocate appearing for petitioner relies upon a decision reported in VIJENDRA KUMAR GOEL v. KUSUM BHUWANIA : (1997)11SCC457 . In the said case, it is held as follows:-

' The respondent filed a suit on 21.12.1990 based on an agreement dt.25.03.1985 for sale of land belonging to him, seeking inter alia, a declaration that the agreement was still subsisting and the defendant was bound to execute and register the sale deed in his favour and also an injunction against the defendant from transferring the land to any other person. During the pendency of the suit, the respondent submitted an application on 16.4.1993 for amendment of the plaint by seeking to add therein that 'after receiving consideration the defendant be directed to execute and register sale deed in favour of the plaintiff within a period fixed by the court failing which the sale deed be executed and registered by the court'. The trial court refused the amendment but the High Court in revision allowed the same. Before the Supreme Court, it was contended that on the date of filing of the application for amendment a suit for specific performance of the contract was barred by limitation in view of the provisions contained in Article 54 of the [Limitation Act, 1963](#) and the High Court was in error in allowing the amendment. Allowing the defendant's appeal.'

This is a case, where the suit was filed for declaration and injunction and subsequently the relief of specific performance was sought for and in the said circumstances, the amendment sought for was disallowed. That in the said suit at the time of filing, there should have been a prayer for specific performance, but it was not prayed for and in the said circumstances, the Apex Court held that the plaintiff, though made a reference to the agreement in the plaint, had not chosen to pray for specific performance in the suit and the said prayer was requested after three years from the date of the contract and only in the said circumstances, the said prayer was turned down. That is not the case in the present case. The facts in the present case are entirely different.

12. In the given case the trespass alleged by the plaintiff was very much denied by the defendant, which necessitated the plaintiff to file an application for appointment of Advocate Commissioner and on appointment, the Advocate Commissioner inspected the suit property on 06.07.2002 and during the time of inspection, the trespass made by the defendant was brought to light and the petitioner filed a petition on 14.11.2002, to amend the plaint, which is well within time. It cannot be stated that the petition filed by the petitioner is barred by limitation.

13. Learned counsel strained to impress upon the Court that the application to amend the plaint should have been filed within three years from the date of alleged trespass on 19.8.1999. I am unable to agree with such argument. When the trespass by the defendant was denied, in order to prove the same, the plaintiff filed an application for appointment of Advocate Commissioner and the Advocate Commissioner inspected the suit property on 6.7.2002 and the application to amend the plaint was filed on 14.11.2002, within four months and that therefore, the petition is not at all beyond the period, presented.

14. Learned counsel for the petitioner also relied upon the cases reported in KHAIR MOHD. KHAN v. MT. JANNAT A.I.R. 1940 LAH 359, K. SATYANARAYANA v. K. RAMAIAH : AIR 1983 SC452 , RAJA RAM v. BAHADUR : AIR1980 All115 and FAQIR CHAND v. LILA RAM : AIR1994 Delhi161 . The above decisions are not helpful to the case on hand, as they all deal with different aspects.

15. In the above circumstances, I do not find any error on the order impugned, which warrants interference by this court. Therefore, the above C.R.P. is dismissed. Consequently, the connected C.M.P. is dismissed. No costs.