

**Banumathi Vs. Chellammal and Another**

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**Court :** Chennai

**Decided On :** Sep-25-2012

**Judge :** R.S.Ramanathan

**Appeal No. :** C.R.P.(PD) No. 2177 of 2012 and M.P.No.1 of 2012

**Appellant :** Banumathi

**Respondent :** Chellammal and Another

**Advocate for Pet/Ap. :** For the Petitioner: R. Sathish Kumar, Advocate. For the Respondents: M.L.Ramesh, Advocate.

**Judgement :**

(Civil Revision Petition filed under Article 227 of the Constitution of India to allow this Civil Revision Petition and set aside the order in I.A.No.353 of 2011 in O.S.No.318 of 2007 on 23.2.2012 by the District Munsif, Uthukottai, Tiruvallur District.)

The plaintiff in O.S.No.318 of 2007 on the file of the District Munsif-cum-Judicial Magistrate Court, Uthukottai, is the revision petitioner.

2. The revision petitioner/ plaintiff filed the suit for partition of her 1/3rd share in the suit properties. In the plaint she mentioned about the settlement deed executed by her father in favour of her brother namely the 2nd defendant and giving all the properties to the 2nd defendant. Nevertheless, she did not pray for declaration that

the settlement deed is not valid. The respondents/ defendants also filed a statement stating that without a prayer for setting aside the settlement deed, the suit for partition will not be maintainable. Thereafter, when the case was about to be listed for trial the revision petitioner/ plaintiff filed an application to amend the plaint to include the relief of declaration that the settlement deed executed by her father in favour of the 2nd defendant is null and void and also to include Para 9(a) to the effect that the settlement deed is null and void and not binding on the plaintiff and that application was rejected and aggrieved by the same this revision is filed.

3. It is submitted by the learned counsel for the revision petitioner that the trial has not commenced and though the revision petitioner/ plaintiff mentioned about the settlement deed in the plaint, due to inadvertence she omitted to pray for declaration that the settlement deed is null and void and later on seeing the written statement, the plaintiff realized that she ought to have prayed for declaration that the settlement deed is null and void and therefore she filed the application and the Court below dismissed the said application on the ground that this application is barred by limitation. The learned counsel for the revision petitioner also relied upon the Judgement of the Hon'ble Supreme Court reported in 2004 (4) CTC 231 ( Pankaja and another Vs. Yellappa (D) LRs. and others) and submitted that the amendment application cannot be dismissed on the ground that the relief is barred by limitation and he also relied upon the Judgement of this Court rendered in C.R.P.(PD) NO.3669 of 2010 dated 21.9.2011 in support of his contention.

4. The learned counsel for the respondents submitted that the petitioner is aware about the settlement deed and she also mentioned the same in the plaint and deliberately she omitted to include the relief of declaration in the plaint and even after reading the written statement wherein the plea was taken, the plaintiff has not come forward to amend the plaint and when the case was about to be listed for trial, the application was filed and considering the fact that the settlement deed is dated 25.11.2004 and the suit was filed in 2007 and the application for amendment was filed in 2010, the Court below rightly dismissed the application on the ground that it is clearly barred by limitation and hence the order of the Court below need not be interfered with. He also relied upon the Judgement of the

Hon'ble Supreme Court reported in 2005 (4) SCC, page 480 ( Kailash Vs. Nanhku and others) wherein the Supreme Court has stated that in a civil suit the trial begins when the issues were framed and the case is set out for recording of evidence and in this case admittedly issues were already framed and when the case was about to be listed for trial this application was filed and hence it cannot be contended that it is a pre-trial amendment. He also relied upon the Judgement of the Hon'ble Supreme Court reported in 2009 (10) SCC, 84 (Revajeetu Builders and Developers Vs. Narayanaswamy and sons and others) wherein the Hon'ble Supreme Court has laid down the guide lines in the matter of amendments and as per the guidelines the amendment petition cannot be allowed and as it changes the nature and character of the suit and when the amendment is also barred by limitation on the date of application. He therefore submitted that the Court below has rightly dismissed the application.

5. In the Judgement reported in 2009 (10) SCC, 84 (Revajeetu Builders and Developers Vs. Narayanaswamy and sons and others), the Hon'ble Supreme Court has laid down the factors to be taken into consideration while dealing the application for amendment and which are as follows:

(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; (3) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

Therefore, as per the above Judgement if a fresh suit on the amended plaint would be barred by limitation on the date of application the amendment should be declined. Nevertheless, the Hon'ble Supreme Court has also stated that when the amendment sought for is imperative for proper and effective adjudication of the case and when it does not cause any prejudice to the other side which cannot be compensated adequately in terms of money the amendment can be allowed.

6. In the Judgement of the Hon'ble Supreme Court reported in 2004 (4) CTC 231 ( Pankaja and another Vs. Yellappa (D) LRs. and others), the Hon'ble Supreme

Court held as follows:

“So far as the Court's jurisdiction to allow an amendment of pleadings is concerned there can be no two opinions that the same is wide enough to permit amendments even in cases where there has been substantial delay in filing such amendment applications. This Court in numerous cases has held the dominant purpose of allowing the amendment is to minimize the litigation, therefore, if the facts of the case so permits, it is always open to the Court to allow applications in spite of the delay and latches in moving such amendment application.

The law in this regard is also quite clear and consistent that there is no absolute rule that in every case where a relief is barred because of limitation an amendment should not be allowed. Discretion in such cases depends on the facts and circumstances of the 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. If the granting of an amendment really subserves the ultimate cause of justice and avoids further litigation the same should be allowed. There can be no straight jacket formula for allowing or disallowing an amendment of pleadings. Each case depends on the factual background of that case.”

7. In this case it is stated in the plaint that the father has executed the settlement deed in favour of the 2nd defendant. Admittedly, no prayer was sought for to declare that the settlement deed is null and void or set aside the settlement deed. Admittedly, the suit has not been listed for trial and even according to the Judgement of the Hon'ble Supreme Court reported in 2005 (4) SCC, page 480 ( Kailass Vs. Nanhku and others), in a civil suit the trial begins to commence when the case is set out for recording of evidence. Therefore according to me it is only a pre-trial amendment and the Hon'ble Supreme Court has held in many Judgments that the pre-trial amendments are to be considered liberally. Further, it is quite clear that the contention of both parties the relief of declaration is also necessary and whether the relief is barred by limitation or not can be gone into during trial as the question of limitation is a mixed question of law and facts. Further, no prejudice would be caused to the defendants by allowing the amendment and the

same can be compensated by ordering costs. Considering all these aspects, the Court below ought to have allowed the application. Hence, the order of the Court below is set aside and the revision is allowed on payment of costs of Rs.5000/- payable by the revision petitioner/ plaintiff within a period of four weeks from the date of receipt of a copy of this order, failing which the revision shall stand dismissed. It is also open to the respondents/ defendants to raise the plea of limitation by filing additional written statement before the Court below and the Court below is directed to frame additional issue with regard to limitation if necessary. The Court below is directed to dispose of the suit within a period of six months from the date of receipt of a copy of this order.

8. With the above direction, the Civil Revision Petition is allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

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