

(2013) 10 MAD CK 0196

Madras High Court

Case No: C.R.P. (PD) No. 2934 of 2009 and M.P. No. 1 of 2009

Mari and Velumani

APPELLANT

Vs

K. Subramani

RESPONDENT

Date of Decision: Oct. 31, 2013

Citation: (2014) 1 CTC 696 : (2013) 5 LW 502

Hon'ble Judges: R. Subbiah, J

Bench: Single Bench

Advocate: I.C. Vasudevan, for the Appellant; B. Kumarasamy, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

R. Subbiah, J.

This Civil Revision Petition has been filed as against the order dated 27.07.2009 passed in I.A. No. 227 of 2009 in O.S. No. 26 of 2006 on the file of the Principal Sub-Court, Gobichettipalayam, Erode District, allowing the application filed by the respondent herein to amend the plaint. The petitioners herein are the defendants and the respondent herein is the plaintiff before the trial Court.

2. The respondent herein/plaintiff filed the suit in O.S. No. 26 of 2006 on the file of the Principal Sub-Court, Gobichettipalayam, Erode District as against the petitioners herein/defendants for recovery of money.

3. It is the case of the respondent herein/plaintiff that the petitioners herein/defendants have borrowed a sum of Rs. 75,000/- from him on 22.05.1996 on execution of promissory note. Apart from executing a promissory note, the petitioners herein/defendants have also deposited a title deed registered as Doc. No. 1026/93 in respect of a property owned by them, as security, for the due repayment of the said loan amount, at Karaliyam Village. Since the petitioners herein/defendants have failed to repay the loan amount, the respondent herein/plaintiff filed the present suit in O.S. No. 26 of 2006 for recovery of money.

Though the loan was availed in the year 1996, the suit was filed in the year 2005. But, in the plaint, it has been stated that since ten years time was fixed under the pro-note to repay the loan amount, the suit is not barred by limitation.

4. The case of the respondent herein/plaintiff was resisted by the petitioners herein/defendants by filing written statement denying the averment made in the plaint that they had received a sum of Rs. 75,000/- as a loan from the respondent/plaintiff. It is the specific defence of the petitioners/defendants that they have received only a sum of Rs. 20,000/- from the respondent/plaintiff and they have also paid major portion of principal and interest amount, leaving a balance of Rs. 4,000/- as outstanding. Further, when they requested the respondent/plaintiff to return the title deed/settlement deed which was given by them on the date of availing loan, the respondent/plaintiff informed them that he had misplaced the document and he would trace out the title deed/settlement deed and return to them. Thereafter, on several occasions, the petitioners/defendants made requests to return the title deed/settlement deed, but the respondent/plaintiff has not come forward to return the title deed/settlement deed. But, on the contrary, with an intention to grab the property, now with false allegation, the present suit has been filed by the respondent/plaintiff.

5. It is further defence of the petitioners/defendants that the document was deposited by them in Karaliyam Village, which is not a notified place, as required u/s 58(f) of the Transfer of Property Act. Based on the deposit of title deed/settlement deed made in the Karaliyam Village, the respondent/plaintiff can not seek for any relief as against the petitioners/defendants. The respondent/plaintiff ought to have filed the suit for recovery of money within a period of three years from the date of execution of Promissory Note, whereas the present suit has been filed after 10 years from the date of execution of the promissory note. Hence, the suit is hit by limitation. Thus, the petitioners/defendants prayed for dismissal of the suit.

6. After the commencement of the trial, the respondent/plaintiff examined himself as P.W. 1. When the suit was posted for cross-examination of P.W. 1, the respondent/plaintiff had filed an application in I.A. No. 303 of 2007 seeking to amend the plaint with regard to the place of deposit of title deed to the effect that the petitioners/defendants had received the loan amount at Karaliyam Village and deposited the title deed/settlement deed at Sathyamangalam Town. But, the said application was opposed by the petitioners/defendants stating that after the commencement of the trial, the place of cause of action originally mentioned in the plaint cannot be amended, since it would defeat the right accrued on the defendant.

7. The trial Court, after hearing both sides in the said application, had dismissed the application by order dated 14.08.2008.

8. Aggrieved over the same, the respondent/plaintiff had filed C.R.P. (PD). No. 4032 of 2008 before this Court. This Court by order dated 05.12.2008 disposed of the said

revision petition observing that the respondent/plaintiff has not stated about the proposed amendment in the affidavit and also the said affidavit is conspicuously silent as the matter to be deleted or added and thus, gave an opportunity to the respondent/plaintiff to file a fresh Interlocutory Application and to seek proper remedy. The relevant passages in the order of this Court dated 05.12.2008 in C.R.P. (PD). No. 4032 of 2008, run as follows:-

3. This Court on going through the affidavit in I.A. 303/2007 filed by the revision petitioner/plaintiff is of the considered view that the revision petitioner/plaintiff has not stated about the proposed amendment in the affidavit and also the said affidavit is conspicuously silent as the matter to be deleted or added. Moreover, in the application filed along with I.A. 303 of 2007 (petition), the amendment detail or deletion detail is mentioned and this Court is of the considered opinion that the same is not suffice.

4. Inasmuch as the civil revision petitioner/petitioner/plaintiff has mentioned about the matter to be deleted or added in the application and not in the sworn affidavit, this Court on the basis of equity fair play and as a prudent course directs the civil revision petitioner/petitioner/plaintiff to file a fresh Interlocutory Application in this regard before the trial Court and to seek appropriate remedy in the manner known to law and with this observation, the civil revision petition is disposed of. No costs. Consequently, connected M.P. No. 1 of 2008 is closed.

Pursuant to the above said order passed by this Court, the respondent/plaintiff has filed an application with detailed averment in I.A. No. 227 of 2009 seeking to amend the place of deposit of title deed as Sathyamangalam instead of Karaliyam Village. The said application was allowed by the Court below by impugned order dated 27.07.2009. Aggrieved over the same, the present civil revision petition has been filed by the petitioners/defendants.

9. The learned counsel for the petitioners/defendants submitted that even as per the averments made in para-6 of the plaint (cause of action para), on the date of availing the loan, title deed/settlement deed pertaining to the petitioners' property was deposited by the petitioners only at Karaliyam Village. The said Karaliyam Village is not a notified place in the official Gazette as required u/s 58(f) of Transfer of Property Act. Therefore, the deposit of title deed/settlement deed has no significance in this matter. Therefore, the period of limitation cannot be computed based on the deposit of title deed/settlement deed for filing the suit. Further, if at all, any amount is payable by the petitioners/defendants to the respondent/plaintiff, he ought to have filed the suit within a period of three years from the date of execution of the promissory note. But, whereas the suit was filed only in the year 2006, after lapse of 10 years from the date of execution of the promissory note. Therefore, the suit is hit by limitation. Though a specific defence with regard to limitation was taken by the petitioners/defendants, the respondent/plaintiff has not chosen to amend the plaint, till the trial has commenced. Only after P.W. 1 was

examined and at the time of cross-examination of P.W. 1, the respondent/plaintiff has filed the application for amendment to amend the place of deposit of title deed mentioned in the plaint to the effect that the petitioners/defendants received the loan amount at Karaliyam Village and deposited the title deed/settlement deed at Sathyamangalam Town. The said application was filed only to get over the defence of limitation taken out by the petitioners/defendants in the written statement. After commencement of the trial, such an amendment cannot be entertained. In support of this contention, the learned counsel for the petitioners/defendants have also relied upon the judgment reported in [D. Ramanujam Vs. R. Panneerselvam](#), .

10. Per contra, the learned counsel for the respondent/plaintiff submitted that by amending the place of deposit of title deed, the nature of the suit is not going to be changed and therefore, no infirmity could be found in the order passed by the Court below in allowing the amendment application filed by the respondent/plaintiff. Further, the learned counsel for the respondent/plaintiff relied upon the following judgments reported in

i) 2002 (4) CTC 189 [Samapath Kumar Vs. Ayyakannur and another

ii) [C. Rajamani Vs. C. Rathnabai](#),

iii) [C.V. Rambabu Vs. V.C. Jayanthi](#),

in support of his contention that the amendment of the plaint could be allowed at any stage of the trial to determine the real question in controversy between the parties. Thus, he prays for dismissal of the present revision petition.

11. Keeping the submissions made on either side, I have carefully gone through the entire materials available on record.

12. The respondent herein/plaintiff has filed the suit for recovery of money in respect of the loan availed by the petitioners/defendants from him on 22.05.1996. But, it is the specific pleading in the plaint that on the date of availing loan the petitioners/defendants had deposited the title deed as a collateral security for the loan at Karaliyam Village. In the cause of action para of the plaint it has been stated as follows:-

It is the defence of the learned counsel for the petitioners/defendants that in the written statement filed by them it has been clearly stated that Karaliyam village is not a notified place in the official Gazette and therefore, no significance can be attached to the deposit of the title deed. Further more, the suit was filed only for recovery of money and no prayer was sought for based on the deposit of title deed. Since the suit was filed for recovery of money based on promissory note executed by the petitioners/defendants, the suit is hit by limitation. The relevant para from the written statement is as follows:-

13. Though the petitioners/defendants had taken a specific defence in the written statement to the effect that the limitation for filing the suit cannot be computed based on the deposit of title deeds made at Karaliyam Village, since creating a mortgage by depositing title deed will not apply to the said village, which is not a notified area as required u/s 58(f) of Transfer of Property Act, the respondent herein/plaintiff has not chosen to amend the plaint till the commencement of trial and only after examination of P.W. 1 in chief, at the time of cross-examination, the application for amendment was filed by the respondent/plaintiff to amend the place of deposit of title deed in the cause of action para. As per the amendment application filed by the respondent/plaintiff, the loan amount was received by the petitioners/defendants in Karaliyam Village and the title deeds were deposited at Sathyamangalam village. The prayer made in the amendment application is as follows:-

14. The above said amendment sought for by the respondent/plaintiff was vehemently opposed by the petitioners/defendants by filing a detailed counter. But, the said application was allowed by the trial Court. Hence, the present civil revision petition.

15. In the present civil revision petition it is the submission of the learned counsel for the petitioners/defendants that by amending the place of deposit of title deed as Sathyamangalam, the respondent/plaintiff is trying to get over the defence of limitation. Whereas, according to the respondent/plaintiff, by amending the place of occurrence, the nature of the suit is not going to be changed and therefore, no infirmity could be found in the order passed by the trial Court.

16. In view of the submissions made on either side, now the questions that has arisen for consideration are-

i) Whether the amendment sought for i.e., to amend the place of deposit of title deed could be allowed?

ii) Whether application for amendment of the plaint could be entertained after the commencement of the trial?

17. The suit was filed by the respondent herein as against the petitioners/defendants for recovery of loan amount of Rs. 1,40,453/- with interest. It is the case of the respondent/plaintiff that the petitioners/defendants availed a loan of Rs. 75,000/- on 22.05.1996 by executing a promissory note. On the date of execution of promissory note, they have also deposited a title deed in respect of the property owned by them as collateral security. It is averred in the cause of action para of the plaint that the title deed was deposited at Karaliyam Village by the petitioners/defendants. By taking the deposit of title deed as cause of action for filing the suit, the respondent/plaintiff filed the suit in the year 2006 i.e., after 10 years from the date of availing the loan from the plaintiff.

18. Now, it is the contention of the learned counsel for the respondent/plaintiff that since the title deed was deposited by the petitioners/defendants in respect of loan availed by them as collateral security, there is a limitation period of 12 years for filing the suit, but the suit was filed within 10 years. Per contra, it is the case of the petitioners/defendants, even as per the averments made in the cause or action para or the plaint, the title deed was deposited only at Karaliyam Village. The said Karaliyam Village is not a notified area. Therefore, no significance could be attached to the deposit of title deed made at Karaliyam Village. Therefore, computation of limitation period as 12 years by taking the deposit of title deed as cause of action for filing the suit is not sustainable.

19. According to the petitioners/defendants, if at all any outstanding amount is due from the petitioners/defendants, the respondent/plaintiff ought to have filed the suit for recovery of money within a period of three years from the date of execution of promissory note. Though a specific defence was taken with regard to the period of limitation, the respondent/plaintiff has not chosen to amend the plaint till the commencement of the trial. Only after the examination of P.W. 1 in chief and at the time of cross-examination, the respondent/plaintiff has come forward with the application to amend the plaint to the effect that the loan amount was received by the petitioners/defendants at Karaliyam Village and title deed was deposited at Sathyamangalam Town. According to the petitioners/defendants, Sathyamangalam Town is notified town and only in order to get over the defence of limitation raised by the petitioners/defendants, now the present amendment application has been filed by the respondent/plaintiff after the commencement of the trial and such an amendment cannot be allowed after commencement of the trial.

20. Keeping these submissions made on either side in mind, I have gone through the entire materials available on record and I find that the petitioners/defendants raised the defence of limitation in the written statement much earlier to the application filed by the respondent/defendant to amend the plaint. The respondent/plaintiff has not taken any steps to amend the plaint till the trial has commenced. Further, the documents filed by the plaintiff are also ambiguous with regard to the place of the deposit of title deed. Now, if the place of deposit of title deed is amended as Sathyamangalam Town, as prayed for by the respondent/plaintiff in his application, the respondent/plaintiff can get over the defence of limitation raised by the petitioners/defendants in their written statement. Therefore, in my considered opinion, if the amendment application is allowed after commencement of the trial that would definitely defeat the legal right that has already accrued to the petitioners/defendants and such an amendment cannot be allowed that too after the commencement of the trial. In this regard, a reference could be placed in the judgment reported in [B.K.N. Narayana Pillai Vs. P. Pillai and Another](#), wherein it has been held that no amendment should be allowed which amounts to or results in defeating a legal right accruing to the opposite party on account of lapse of time.

21. Moreover, in the instant case, no document prior to the period of filing the suit is available to show that the title deed was deposited at Sathyamangalam Town. In such a situation, as observed earlier, if the amendment is allowed that would defeat the legal right that has already accrued to the petitioners/defendants.

22. Though the learned counsel for the respondent/plaintiff relied upon number of judgments in support of his contention that the plaint can be amended at any stage of the trial to determine the real controversy of the parties, I find the factual aspects of all the cases cited by the learned counsel for the respondent/plaintiff would show that in those cases, by allowing the application, the legal right accrued on the opposite party is no way defeated. Therefore, the judgments relied upon by the learned counsel for the respondent/plaintiff cannot be made applicable to the present facts of this case. In the instant case, in my considered opinion, the amendment allowed by the Court below allowing the plaintiff/respondent herein to change the place of deposit of title deed would defeat the legal right accrued on the defendants/petitioners herein, after the commencement of the trial, especially in the circumstance when no document prior to the period of filing the suit is available with regard to the place of deposit of title deed. Such an amendment cannot be entertained after the commencement of the trial. Hence, the impugned order passed by the Court below is liable to be set aside.

In the result, the civil revision petition is allowed and the impugned order is set aside. Consequently, connected Miscellaneous Petition is closed. There is no order as to costs.