2024 INSC 1021

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 14803 OF 2024
(arising out of SLP (CIVIL) NO. 29135 OF 2019)

MALLAVVA AND ANR. ..... APPELLANT(S)

VERSUS

KALSAMMANAVARA KALAMMA .....RESPONDENT(S)
(SINCE DEAD) BY LEGAL HEIRS & ORS.

J U D G M E N T

J.B. PARDIWALA, J.:

1. Leave granted.

2. This appeal arises from the judgment and order passed by the High Court of Karnataka, Dharwad Bench dated 13.06.02019 in Regular Second Appeal No. 100071 of 2019 by which the Second Appeal filed by the appellants herein (original defendants) came to be dismissed thereby affirming the

judgment and order passed by the First Appellate Court allowing the appeal filed by the respondents herein(original plaintiffs) and decreeing the suit for declaration of title and possession.

3. The facts giving rise to this appeal may be summarised as under:

a. For the sake of convenience, the appellants herein shall be referred to as the original defendants and the respondents herein shall be referred to as the original plaintiffs.

b. The original plaintiff Late Kalsammanavara Kalamma instituted Original Suit No. 67 of 2011 in the Court of the Civil Judge and JFMC, Hadagali, seeking relief of declaration and injunction in respect of the suit property. In the said suit, the trial court framed the following issues:

> *"1. Whether the plaintiff proves that she is the absolute owner and in possession of the suit properties?*
>
> *2. Whether the plaintiff proves that she belonged to the Kalasammanavar family, and her ancestors Chinmayappa and Mallappa are own brothers?*
>
> *3. Whether the plaintiff proves that the defendants are interfering with the peaceful possession and*

enjoyment of the suit schedule properties of the plaintiff.

4. Whether the defendants prove that Jamani Mallavva has consented to change the Khatha in the name of defendant No.2 in respect of the suit properties?

5. Whether the defendants prove that the suit is not maintainable without seeking the relief of possession by the plaintiff?

6. Whether the defendants prove that they are in lawful possession and enjoyment of the suit schedule properties?

7. Whether the defendants prove that the Court fee paid by the plaintiff is insufficient?

8. Whether the plaintiff is entitled for the relief as sought for?

9. What order or decree?

c. The trial court answered the issue No. 1 referred to above partly in affirmative and issue Nos. 2, 4, 5 and 6 respectively in the affirmative. The issue Nos. 3 and 7 respectively were answered in the negative. The trial court accordingly dismissed the suit with costs of Rs. 5, 000.

d. Before the original plaintiff could file First Appeal, she passed away.

In such circumstances referred to above, her legal heirs i.e., the respondents herein preferred Regular First Appeal No. 80 of 2018 in the Court of Sr. Civil Judge, Hoovina Hadagali seeking to challenge the judgment and decree passed by the trial court in Original Suit No. 67 of 2011 referred to above.

e. The First Appellate Court framed the following points for determination:

"1. Whether the appellants/ plaintiff proved that they belong to Kalasammanavara family thereby they became the absolute owners of the suit property by virtue of inheritance?

2. Whether the impugned judgment and decree is capricious, perverse, illegal and calls the interference by this court?

3. Whether the claim of the plaintiff is barred under law of limitation?"

f. The First Appellate Court answered the points of determination referred to above as under:

> *"Point no.1: In affirmative,*
> *Point no.2: Partly in affirmative,*
> *Point no.3: In the negative,*
> *Point no.4: As per final order for the following.."*

g. It is pertinent to note that before the First Appellate Court the appellants herein as defendants had filed cross-objection challenging the findings recorded by the trial court on the issue Nos. 1 and 2 respectively referred to above.

h. It also appears that in the First Appeal filed by the legal heirs of the original plaintiffs an application for amendment of plaint was filed wherein, the plaintiffs prayed for possession of the suit property. The application seeking amendment of plaint filed by the legal heirs of the original plaintiff came to be allowed by the First Appellate Court and the plaint was accordingly amended.

i. The order passed by the First Appellate Court allowing the amendment application reads thus:

> *"11. As per the findings of the trial court, the plaintiff is an absolute owner of suit properties. The respondents have filed the cross appeal challenging the said appeal. But the trial court comes to conclusion that the plaintiff is not in possession over the suit properties. That is the reason plaint came to be dismissed. But the legal heirs of the plaintiff are still contending that they have continued the possession over the suit properties. But they want to amend the plaint by inserting the alternative prayer of possession. Since the possession is a fact in issue between the*

parties, it has to be ascertained at the time of argument. However, the proposed amendment is just an alternative relief of possession, the entitlement of the said relief is subject to proof of the particular fact. If the legal heirs of plaintiff are able to establish the possession, seeking the possession is not necessary. On the other hand, if they failed to prove the possession as it is settled principle of law without seeking possession, suit for declaration is not maintainable when the party is not in possession over the properties. Hence the proposed amendment is just and necessary to resolve the actual dispute between the parties.

12. It is settled principle of the law that appeal is the continuation of the proceedings and even the parties can amend their pleadings before the appellate court also subject to proof of the fact. At this juncture it is beneficial to refer the decision of Hon'ble High Court of Karnataka reported in 2016 KCCR(1) 73 in between Puttamaramma V/s Giriyappa & Ors. wherein Hon'ble High Court in para-17 held as hereunder:

> *"17. Appeal being continuation of original proceedings and Appellate Court having power to exercise all the powers vested with the trial Court, would necessarily have power to examine an application filed under Order 6, Rule 17 CPC and it cannot be said that such power to entertain the application for amendment by the Appellate Court would not be available on the ground of proviso to Rule 17 of Order VI CPC curtailing such power which in fact it does not for the reasons already indicated herein above. An appeal being proceedings in continuation of original suit, it can be safely concluded that First Appellate Court is vested*

with similar power possessed by Court of original jurisdiction. Language employed in sub section (2) of Section 107 CPC is clear, unambiguous and explicit, which would clearly indicate that Appellate Court shall have the same power and shall perform as nearly as may be the same duties as are conferred and imposed by the Code on Courts of original jurisdiction in respect of suits instituted therein."

In view of the dictum of Hon'ble High Court the First Appellate Court can exercise the power under Order 6 rule 17 of CPC as it is a continuation of the proceedings. Hence as per the detailed discussion above IA deserved to be allowed. Accordingly point No. 1 is answered in the affirmative.

13. ***Point No.2:-*** *For the aforesaid reason and discussion, I proceed pass the following*

ORDER

I.A. No. II under order 6 rule 17 read with Sec. 151 of C.P.C. is hereby allowed.

Appellants are permitted to amend the plaint and directed to submit the amended plaint in the office within 7 days from this order.

No order as to cost."

j. The First Appellate Court reversed the judgment and order passed by the trial court and thereby allowed the First Appeal

filed by the plaintiffs. The First Appellate Court while allowing the First Appeal observed as under:

> *"40. The counsel or the respondents have argued that the defendants have got amended the plaint and also contended that the suit of the plaintiff as well as her legal heirs are barred under law of limitation as they approached the court after lapse of prescribed law of limitation. Further the counsel for the respondents have argued that since the suit is for the relief of declaration the plaintiff ought to have filed the suit within three years from the date of cause of action. Now they are seeking the relief of possession. The plaintiff shall file the suit within 12 years from the date of dispossession. Even by considering the RTC extracts since 1981, defendants are in possession of the suit properties, totally the claim of the plaintiff is barred under law of limitation. By considering the arguments I again carefully went through the pleading and other materials available on record.*
>
> *41. Of course initially the suit is for declaration of title and consequential relief of permanent injunction. As per the provision of Article 58 of Limitation Act, in order to obtain any declaration three years when the right to sue first accrues. As per the detailed discussion made above of course the plaintiff has established her right over the suit properties. Now the legal heirs of plaintiff are claiming the alternative relief of possession. Since the plaintiff failed to prove their possession, they are entitled for the possession also. In order to entitle the possession, as per*

provision of Article 55 of Limitation Act, the limitation is 12 years when the possession of the defendants became adverse to the plaintiff. ...

As per the dictum of Hon'ble Supreme Court when the suit is for possession based on title, once the title is established unless the defendant proves adverse possession, the plaintiff cannot be non suited. Here the claim of the plaintiff by virtue of the title succeeded by through her ancestors. Under such circumstances unless the defendants have pleaded and proved that they are in adverse possession against to the interest of the plaintiff, the plaintiff cannot be non suited. Accordingly now it is settled principle of law that when the plaintiff established right, title and interest over the suit property and the defendants are in possession unless and until the defendants are proved that they are in adverse possession and they became owners over the particular property by virtue of adverse possession the plaintiff cannot be non suited and it cannot be hold that suit is barred by law of limitation. Admittedly the defendants nowhere have pleaded that they are in possession of the suit property, adverse to the interest and right against to the plaintiff. Under such circumstances this Court of the considered opinion that the suit is not barred by limitation as contended by the defendants and the suit is in time and the plaintiff is entitled the relief as sought for."

(Emphasis supplied)

k. The operative part of the First Appellate Court's judgment reads thus:

"The appeal filed by appellants/ legal heirs of plaintiff under Order 41 Rule 1 and 2 r/w Sec.151 CPC is hereby allowed.

The judgment and decree in OS No.67/2011 dated 6.9.2014 on the file of Civil Judge and JMFC, Huvinahadagali is hereby set aside by modifying the findings.

Suit of the plaintiff is hereby decreed.

The legal heirs of plaintiff are hereby declared as an absolute owner of the suit properties and the defendants are hereby directed to handover the possession of the suit properties within 60 days from this order."

l. The appellants herein being dissatisfied with the judgment and decree passed by the First Appellate Court went before the High Court by filing Second Appeal under Section 100 of the CPC.

m. The High Court found that there was no substantial question of law involved in the Second Appeal and accordingly proceeded to dismiss the same holding as under:

"The present appellants have also contended that the suit for declaration and possession is barred by limitation under Article 58 of the

Limitation Act. Since First Appellate Court has held that the plaintiff is the absolute owner of the suit property, she is entitled for possession, and the case is not covered under Article 58 of the Limitation Act. It is also not the case of the defendants that they are in adverse possession of the suit property over the statutory period, and they have perfected their title over suit properties by adverse possession. When this is not the case of the defendants, Article 65 of the Limitation Act has to be applied and consequently, the suit of the plaintiff cannot be held as barred by limitation. Moreover, when the suit of the plaintiff is based on title, the question of limitation does not arise. Under these circumstances, it is held that the appellants have not at all made out any substantial questions of law for consideration in the present appeal. Therefore, the appeal being devoid of merit is liable to be dismissed. Accordingly, the appeal is dismissed."

4. In such circumstances referred to above, the appellants (original defendants) are here before this Court with the present appeal.

WRITTEN SUBMISSIONS ON BEHALF OF THE APPELLANTS

a. The High Court committed a serious error in dismissing the Second Appeal without even formulating any substantial question of law. Trial court was justified in dismissing the suit on the ground that the appellants herein (defendants) are

in possession of the suit property since 1981-82 and the suit filed without seeking relief of possession was liable to be dismissed.

b. The plaintiff filed the present suit on 29.07.2011 with the prayer of declaration of title and permanent injunction. Significantly, there was no prayer for possession in the suit as originally filed. The suit was filed asserting title on the basis that plaintiff's collaterals were the original owners of the suit properties and that the collateral branch remined heirless and therefore the suit property devolved on the plaintiff and further that the plaintiff was in possession of the suit properties. The Trial Court found that petitioners-defendants were in possession from 1981-1982 continuously and revenue records stood in the name of the petitioners-defendants since 1981-1982. All through the pendency of the suit before the Trial Court the plaintiff did not seek any amendment of the plaint to seek the relief of possession. Thus, the suit as framed was primarily one for declaration of title and consequential relief for injunction. The respondent-plaintiff filed an appeal before the First Appellate Court and during the pendency of the appeal filed an application for amendment of the plaint to incorporate the relief of possession. The said application for amendment was allowed by the First Appellate Court on 22.06.2018. Therefore, the prayer for amendment was made as late as 2018 though, the petitioners-defendants had been in possession since 1981-1982. Thus, the suit was barred by limitation.

c. The respondent – plaintiff pleaded case with regard to cause of action was that the petitioners-defendants managed to get change of Khatha in the name of the petitioners-defendants in the

revenue records and this gave rise to the cause of action. It is the concurrent finding of the Trial Court and the First Appellate Court that the revenue records stood in the name of the petitioners-defendants since 1981-1982. The Trial Court noted at page 67 of its judgment that the mutation took place in favour of petitioners-defendants in the year 1981-1982. The finding of the Trial Court in this regard is under:

> *"All the documents i.e., RORs and Patta Book of the suit properties revealed that in the year 1981-1982 the Jummani Mallavva had consented to the defendants to mutate their names in respect of the suit schedule properties and from the 1981-1682 onwards, the name of the defendants are appearing in the revenue records of the suit properties."*

Therefore, the cause of action as far back as 1981-1982 and the suit for declaration of title (primary relief) was barred under Article 58 of the Schedule to the Limitation Act.

5. In such circumstances referred to above, the learned counsel prayed that there being merit in his appeal, the same may be allowed and the impugned judgment passed by the High Court be set aside.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS (ORIGINAL PLAINTIFFS)

a. The Petitioners have filed this Special Leave Petition against the final Judgement of the High Court of Karnataka, Circuit Bench at Dharwad dated 13-06-2019 in RSA No.100071/2019 by which the Petitioners' second appeal is dismissed.

b. This proceeding originates from the suit bearing O.S. No.67 of 2011, filed by deceased Respondent seeking relief of declaration and injunction. The Trial Court, after appreciation of evidence, found the plaintiff/respondent to be the owner. However, the Trial Court found that the plaintiff is not in possession and since she had not prayed for possession, the suit was not maintainable and hence dismissed the suit.

c. The finding regarding declaration of ownership over the suit property was upheld by the first appellate court and in the impugned judgement by the High Court, as well. Hence, the finding that the plaintiff is the owner of the suit property is a concurrent finding of fact.

d. Since the trial court had found the defendant to be in possession, the plaintiff/respondent amended the plaint during the pendency of her appeal and added the relief of recovery of possession. The Appellate Court granted the relief of possession to the plaintiff/respondent while allowing her appeal. The decree of possession is confirmed by the High Court by dismissing the Petitioners' second appeal.

e. On 29-11-2019, this Hon'ble Court, while issuing notice on this SLP, confined the notice "to consider the question as to whether the suit for possession (as per amended plaint before the First Appellate Court) was within the period of limitation."

f. The plaintiff traced her title with the averment that Chinmayappa and Mallappa of Kalsammanavara family were brothers; though they were joint owners of the suit properties, the lands stood in the name of Chinmayappa; Chinnappa had a son called Goneppa who died issueless. Plaintiff is granddaughter of the younger brother Mallappa and hence she is the only surviving legal heir.

g. The plaintiff further averred that the defendants did not belong to the Kalsammanavara family but belonged to another family called Jumani family. In Jummani family, there was one Goneppa, whose wife was Mallamma; taking advantage of similarity of the names, the defendants got their names mutated in the Record of Rights.

h. The specific averment in the plaint is that the plaintiff learned about the illegal mutation in the year 2009 and thereafter she initiated Revenue proceedings to question the mutation, during which defendants denied her title and hence she filed the suit. The cause of action pleaded is in 2010, when the defendants denied the title of the plaintiff for the first time.

i. In the written statement, the defendants pleaded that Chinmayappa had a son named Goneppa who had married Mallavva D/o Jumani Basappa, and that the said Wife of Goneppa is the sister of Defendant No.1's Husband. It is further pleaded that Goneppa and Mallavva died issueless leaving behind Defendant No.1's husband as the Class II heir and thus defendants have succeeded to the property. It is further pleaded that Goneppa's wife Mallavva had consented to change the Khatha in the name of

Defendant No.2 under Mutation No.11/81-82 and Defendant No.1 came into lawful possession and enjoyment of the property after the mutation was effected. The defendants have not raised any plea regarding adverse possession. After the plaint was amended by including the prayer for possession, the defendants amended the written statement and added Para 14(a) that the suit is barred by limitation.

j. The First Appellate Court has held that initially the suit was for declaration covered by Article 58 of the Limitation Act and after amendment, the plaintiff has sought possession which is covered under Article 65 of the Limitation Act which is 12 years from the date when the possession of the defendants becomes adverse to the plaintiff. Further the Appellate Court has noted that unless the defendants plead and establish that they are in adverse possession and became owners by virtue of adverse possession, the plaintiff, whose title is proved cannot be non-suited on the ground of limitation.

k. The above-mentioned finding of the First Appellate Court is confirmed with regard to the question of limitation is upheld by the High Court.

l. The argument of the Senior Counsel for the Petitioner that the present suit is barred by limitation under Article 58 of the Limitation Act cannot be accepted. Article 58 is a residuary provision for seeking declaration. Only Article 65 applies to a suit for possession. In the present case, the notice issued by this Hon'ble Court is limited to the question whether the amended prayer for possession is barred by limitation.

6. In such circumstances referred to above, the learned counsel prayed that there being no merit in this appeal, the same may be dismissed.

ANALYSIS

7. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is whether the High Court committed any error in passing the impugned judgment and order.

8. We take notice of the order passed by this Court dated 29.11.2019. The same reads thus:

> "*Delay condoned*.
>
> *Issue notice to consider the question as to whether the suit for possession (as per amended plaint before the First Appellate Court) was within the period of limitation*.
>
> *Status quo, existing as on today, shall be maintained*.
>
> *Call for the records from the Trial Court as well as the First Appellate Court*."

Thus, the only point that falls for our consideration is whether the original suit filed by the plaintiffs even after the amendment of the

plaint at the stage of first appeal seeking possession of the suit property could be said to be time barred. In other words, whether the suit would be governed by Article 58 or Article 65 of the Limitation Act, 1963?

9. It is not in dispute that the trial court even while dismissing the suit held the plaintiffs to be the absolute owner of the suit schedule properties. It is also not in dispute that the plaintiff came to be non-suited as the appellants herein (original defendants) were found to be in lawful possession and enjoyment of the suit schedule properties and the plaintiffs had failed to seek relief of possession of the suit properties as scheduled in the plaint. Thus, so far as title to the property is concerned, the plaintiff was able to establish that she was the absolute owner of the suit schedule properties. In the First Appeal filed by the legal heirs of the original plaintiffs, the plaint was permitted to be amended and added the prayer for recovery of the possession from the defendants came to be added. It is true that as regards the findings on title and ownership, the defendants filed cross-objections before the First Appellate Court and those were looked into and dismissed.

However, as stated above notice was issued by this Court only to consider the issue of period of limitation.

10. In view of the aforesaid, we shall discuss into the position of law as regards the applicability of Article 58 or Article 65 of the Limitation Act in the present litigation.

11. We must first look into Sections 3(1) and 27 and also Articles 58, 65 and 113 of the Limitation Act respectively.

12. Section 3(1) of the said Act reads as follows:

> *"3. Bar of Limitation.-(1) Subject to the provisions contained in sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence."*

13. A mere reading of the said section would reveal that if any suit or appeal or application has been filed beyond the prescribed period of limitation mentioned in the Limitation Act, the same is liable to be dismissed even though the plea of limitation has not been taken as a defence.

14. Section 27 of the said Act reads as follows:

> *"27. Extinguishment of right to property.-At the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished."*

15. It means, as far as a suit for possession is concerned, the same should be filed before expiry of the period mentioned in the Limitation Act and if the same is filed beyond the period of limitation, the right of plaintiff over such property shall become extinguished.

16. Article 58 of the Limitation Act reads as follows:

"Description of suit	*Period of limitation*	*Time from which period begins to run*
To obtain any other declaration	*Three years*	*When the right to sue first accrues"*

From a cursory look of the provision of the said Article, it is easily discernible that apart from the declaratory suits mentioned in Articles 56 and 57, any other declaratory suit should be filed within three years from the date when right to sue first accrues.

17. Article 65 of the Limitation Act reads as follows:

"Description of suit	*Period of Limitation*	*Time from which period begins to run*
For possession immovable property or any interest therein based on title	*Twelve years*	*When the possession of the defendant becomes adverse to the plaintiff"*

From a plain reading of the said Article, it is made clear that a suit filed for recovery of possession based on title should be filed within a period of 12 years when possession of the defendant becomes adverse to the plaintiff concerned.

18. Article 65 of the Limitation Act, 1963 is corresponding to Article 142 of the Limitation Act, 1908, wherein it is stated that the plaintiff who based his case on title has to prove not only title, but also possession within 12 years of the date of suit. The said Article has undergone a metamorphic change in view of Article 65 of the Limitation Act, 1963. The vital distinction between Articles 142 of the Limitation Act, 1908 and Article 65 of the Limitation Act, 1963 is that as per Article 142 of 1908 Act, the plaintiff has to prove not only title, but also possession within 12 years of the date of suit, whereas, as per Article 65 of 1963 Act, a suit for possession based

on title has to be filed within 12 years when possession becomes adverse to the concerned plaintiff.

19. Article 113 reads as follows:

"Description of application	*Period of Limitation*	*Time from which period begins to run*
Any suit for which no period of limitation is provided elsewhere in this Schedule.	*Three years*	*When the right to sue accrues."*

It means, if no prescribed period of limitation is provided elsewhere in the Limitation Act, 1963, as per Article 113 of the said Act, a suit must be instituted within a period of 3 years when the right to sue accrues.

20. From the conjoint reading of the said Sections and Articles of the Limitation Act, 1963, the Court has to find out as to whether the reliefs sought for in the present suit would come within the contour of Article 58 or any other Article of Limitation Act, 1963.

21. Article 58 comes within the purview of Part-Ill of Limitation Act, 1963 and the same deals with suits relating to declarations.

22. The chronology of the following events is important:

i. *The original suit was instituted in the year 2011*
ii. *The suit came to be dismissed on 6.09.2014*
iii. *First appeal was filed on 30.10.2014.*
iv. *An application seeking amendment of plaint was filed along with first appeal on 30.10.2014.*
v. *The application seeking amendment of plaint with a view to add the prayer for recovery of possession was allowed vide order dated 22.06.2018.*
vi. *The Regular appeal came to be allowed on 27.10.2018.*

AMENDMENT OF PLAINT AT THE STAGE OF FIRST APPEAL

23. It is well settled that rules of procedure are intended to be a handmaid to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of rules of procedure. The court always gives relief to amend the pleading of the party, unless it is satisfied that the party applying was acting *mala fide* or that by his blunder, he had caused injury to his opponent which cannot be compensated for by an order of cost. (***Mahila Ramkali Devi v. Nandram (Dead) through Legal Representatives*** : (2015) 13 SCC 132.

24. In ***Jai Jai Ram Manohar Lal*** **v.** ***National Building Material Supply, Gurgaon*** reported in (1969) 1 SCC 869, this Court held that the power to grant amendment to pleadings is intended to serve the needs of justice and is not governed by any such narrow or technical limitations.

25. In ***Pandit Ishwardas*** **v.** ***State of Madhya Pradesh & Ors.*** reported in (1979) 4 SCC 163, this Court observed:

> *"4. We are unable to see any substance in any of the submissions. The learned counsel appeared to argue on the assumption that a new plea could not be permitted at the appellate stage unless all the material necessary to decide the plea was already before the court. There is no basis for this assumption.*
>
> *5. There is no impediment or bar against an appellate court permitting amendment of pleadings so as to enable a party to raise a new plea. All that is necessary is that the appellate court should observe the well-known principles subject to which amendments of pleadings are usually granted. Naturally one of the circumstances which will be taken into consideration before an amendment is granted is the delay in making the application seeking such amendment and, if made at the appellate stage, the reason why it was not sought in the trial court. If the necessary material on which the plea arising from the amendment may be decided is already there, the amendment may be more readily granted than otherwise. But, there is no prohibition against an appellate court permitting an amendment at the appellate stage merely because the necessary material is not already before the court."*

26. In ***Sampath Kumar* v. *Ayyakannu & Anr.*** reported in (2002) 7 SCC 559, it has been held as follows:

> *"An amendment once incorporated relates back to the date of the suit. However, the doctrine of relation back in the context of amendment of pleadings is not one of universal application and in appropriate cases the Court is competent while permitting an amendment to direct that the amendment permitted by it shall not relate back to the date of the suit and to the extent permitted by it shall be deemed to have been brought before the Court on the date of which the application seeking the amendment was filed."*
>
> (Emphasis supplied)

27. In ***Siddalingamma & Anr.* v. *Mamtha Shenoy*** reported in (2001) 8 SCC 561, this Court held as follows:

> *"... On the doctrine of relation back, which generally governs amendment of pleadings unless for reasons the court excludes the applicability of the doctrine in a given case, the petition for eviction as amended would be deemed to have been filed originally as such and the evidence shall have to be appreciated in the light of the averments made in the amended petition. The High Court though set aside the order of the trial court but it is writ large from the framing of the order of the High Court, especially the portions which we have extracted from the order of the High Court and reproduced in earlier part of this judgment, that the learned Single Judge of the High Court also was not seriously doubting the genuineness of the landlady's requirement on the material available on record but was not feeling happy with the contents of the eviction petition as originally filed and an overzealous attempt on the*

part of the landlady in projecting her sister's sons and grandchildren as her own. ...”

(Emphasis supplied)

28. This Court in ***Revajeetu Builders and Developers v. Narayanaswamy and Sons & Ors.,*** reported in (2009) 10 SCC 84, laid down some basic principles which the Court should keep in mind while allowing or rejecting the application for amendment. Para 63 of the said judgment reads thus:

“63. On critically analysing 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;

(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 litigations;

(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 amendment

claims would be barred by limitation on the date of application."

(Emphasis supplied)

29. Thus, the dictum as laid in the above referred judgment of this Court is that the Court should decline amendments if a fresh suit on the amendment claims would be barred by limitation on the date of application.

30. The submission on the part of the appellants herein is that the suit would be governed by Article 58 of the Limitation Act and is liable to be dismissed being time barred whereas the submission on the part of the respondents (original plaintiffs) is that the suit is governed by Article 65 of the Limitation Act and even on the date when the First Appellate Court permitted the plaint to be amended, the same was well within limitation.

31. It is well settled that when there are several reliefs claimed in a suit, the limitation period would be that of the main relief, the limitation for ancillary relief being ignored. The argument of the learned counsel appearing for the appellants herein is not sustainable in law as it proceeds on the assumption as if old Article 142 of the earlier Limitation Act was in force wherein the plaintiff who based his case on title had to prove not only title but

also possession within twelve years of the date of the suit. The said provision of law as observed aforesaid has undergone a metaphoric sea change as we find under the Limitation Act. Article 65 reads as under:

	"Description of Suit	*Period of limitation*	*Time from which period begins to run*
65.	*For possession of immovable property or any interest therein based on title*	*Twelve years*	*When the possession of the defendant becomes adverse to the plaintiff."*

It is, therefore, obvious that when the suit is based on title for possession, once the title is established on the basis of relevant documents and other evidence unless the defendant proves adverse possession for the prescriptive period, the plaintiff cannot be non-suited. [See: ***Indira v. Arumugam and Another*** reported in (1998) 1 SCC 614.]

32. In ***C. Mohammad Yunus v. Syed Unnissa*** reported in AIR 1961 SC 808, it has been laid down that in a suit for declaration with a further relief, the limitation would be governed by the Article

governing the suit for such further relief. In fact, a suit for a declaration of title to immovable property would not be barred so long as the right to such a property continues and subsists. When such right continues to subsist, the relief for declaration would be a continuing right and there would be no limitation for such a suit. The principle is that the suit for a declaration for a right cannot be held to be barred so long as Right to Property subsist.

33. This Court in ***Government of Kerala & Anr. v. Joseph & Ors.*** reported in 2023 SCC Online SC 961 has held as under:

> *"**35.** Mere possession over a property for a long period of time does not grant the right of adverse possession on its own;*
>
> *(a) In Gaya Prasad Dikshit v. Dr. Nirmal Chander (two-Judge Bench)(1984) 2 SCC 286, this court observed-*
>
> > *"1... It is not merely unauthorised possession on termination of his licence that enables the licensee to claim title by adverse possession but there must be some overt act on the part of the licensee to show that he is claiming adverse title. It is possible that the licensor may not file an action for the purpose of recovering possession of the premises from the licensee after terminating his licence but that by itself cannot enable the licensee to claim title by adverse possession. There must be some overt act on the part of the licensee indicating assertion of hostile title. Mere continuance of*

unauthorised possession even for a period of more than 12 years is not enough."

xxx xxx xxx

47. *It has also been held in the case of State of Uttrakhand v. Mandir Sri Laxman Sidh Maharaj (2017) 9 SCC 579 (two-Judge Bench):*

> *"...The courts below also should have seen that courts can grant only that relief which is claimed by the plaintiff in the plaint and such relief can be granted only on the pleadings but not beyond it. In other words, courts cannot travel beyond the pleadings for granting any relief..."*

48. *Mandir Sri Laxman Sidh Maharaj (supra) was relied on in Dharampal (Dead) v. Punjab Wakf Board (2018) 11 SCC 449 (two-Judge Bench) on the same principle.*

49. *Claim of independent title and adverse possession at the same time amount to contradictory pleas. The case of Annasaheb Bapusaheb Patil v. Balwant (1995) 2 SCC 543 (two-Judge Bench) elaborated this principle as:*

> *"15. Where possession can be referred to a lawful title, it will not be considered to be adverse. The reason being that a person whose possession can be referred to a lawful title will not be permitted to show that his possession was hostile to another's title. One who holds possession on behalf of another, does not by mere denial of that other's title make his possession adverse so as to give himself the benefit of the statute of limitation. Therefore, a person who enters into possession having a lawful title, cannot divest another of that title by pretending that he had no title at all."*

50. *This principle was upheld in the case of Mohan Lal v. Mirza Abdul Gaffar (1996) 1 SCC 639 (two-Judge Bench) -*

"4. As regards the first plea, it is inconsistent with the second plea. Having come into possession under the agreement, he must disclaim his right thereunder and plead and prove assertion of his independent hostile adverse possession to the knowledge of the transferor or his successor in title or interest and that the latter had acquiesced to his illegal possession during the entire period of 12 years, i.e., up to completing the period of his title by prescription nec vi, nec clam, nec precario. Since the appellant's claim is founded on Section 53-A, it goes without saying that he admits by implication that he came into possession of the land lawfully under the agreement and continued to remain in possession till date of the suit. Thereby the plea of adverse possession is not available to the appellant."

51. *The Court in Uttam Chand (supra) has reiterated this principle of adverse possession.*

52. *Burden of proof rests on the person claiming adverse possession.*

53. *This Court, in P.T. Munichikkanna Reddy v. Revamma (2007) 6 SCC 59 (two-Judge Bench), it held that initially the burden lied on the landowner to prove his title and title. Thereafter it shifts on the other party to prove title by adverse possession. It was observed:—*

"34. The law in this behalf has undergone a change. In terms of Articles 142 and 144 of the Limitation Act, 1908, the burden of proof was on the plaintiff to show within 12 years from the date of institution of the suit that he had title and possession of the land, whereas in terms of Articles 64 and 65 of the Limitation Act, 1963, the legal position has underwent complete change insofar as the onus is concerned : once a party proves its title, the onus of proof would be on the

other party to prove claims of title by adverse possession....”

54. *The Court reiterated this principle in the case of Janata Dal Party v. Indian National Congress (2014) 16 SCC 731 (two-Judge Bench):*

“...the entire burden of proving that the possession is adverse to that of the plaintiffs, is on the defendant...””

34. The decision of this Court in the case of ***Khatri Hotels Private Limited & Anr. v. Union of India & Anr.*** reported in (2011) 9 SCC 126 relied upon by the learned counsel appearing for the appellants is of no avail. In the said case, the Court was concerned only with Article 58 of the Limitation Act. The Court noted that while enacting Article 58 of the Limitation Act, the legislature had designedly made a departure from the language of Article 120 of the Limitation Act, 1908. The Court noted that the word “first” has been used between the words “sue” and “accrued”. The Court said that the same would mean that if a suit is based on multiple causes of action, the period of limitation would begin to run from the date when the right of sue first accrued. In other words, the Court held that successive violation of the right would not give rise to fresh cause and the suit would

be liable to be dismissed if it was beyond the period of limitation counted from the day when the right to sue first accrued.

35. The decision in the case of ***Rajpal Singh v. Saroj (Deceased) through Legal Representatives & Anr***. reported in (2022) 15 SCC 260, relied upon by the learned counsel appearing for the appellants is also of no avail. In the said case, this Court observed as under:

> *"**14.** The submission on behalf of the original plaintiff (now represented through her heirs) that the prayer in the suit was also for recovery of the possession and therefore the said suit was filed within the period of twelve years and therefore the suit has been filed within the period of limitation, cannot be accepted. Relief for possession is a consequential prayer and the substantive prayer was of cancellation of the sale deed dated 19-4-1996 and therefore, the limitation period is required to be considered with respect to the substantive relief claimed and not the consequential relief. When a composite suit is filed for cancellation of the sale deed as well as for recovery of the possession, the limitation period is required to be considered with respect to the substantive relief of cancellation of the sale deed, which would be three years from the date of the knowledge of the sale deed sought to be cancelled. Therefore, the suit, which was filed by the original plaintiff for cancellation of the sale deed, can be said to be substantive therefore the same was clearly barred by limitation. Hence, the learned trial court ought to have dismissed the suit on the ground that the suit was barred by limitation. As such the learned first appellate court was justified and right in setting*

aside the judgment and decree passed by the learned trial court and consequently dismissing the suit. The High Court has committed a grave error in quashing and setting aside a well-reasoned and a detailed judgment and order passed by the first appellate court dismissing the suit and consequently restoring the judgment and decree passed by the trial court."

36. Thus, it appears that two reliefs were prayed for. One for cancellation of the Sale Deed and the second for recovery of possession. The Court treated the relief for possession as consequential prayer and the relief for cancellation of Sale Deed as the substantive prayer.

37. In such circumstances referred to above, the Court held that if a composite suit is filed for cancellation of Sale Deed as well as for recovery of possession, the limitation period should be considered with respect to the substantive relief of cancellation of Sale Deed which would be three years from the date of knowledge of Sale Deed sought to be cancelled.

38. The dictum as laid in ***Rajpal Singh*** (supra) cannot be made applicable to the facts and circumstances of the case on hand. The reason is simple. Ordinarily when, a suit is filed for cancellation of Sale Deed and recovery of possession, the same

would suggest that the title of the plaintiff has already been lost. By seeking to get the Sale Deed set aside on the grounds as may have been urged in the plaint, the plaintiff could be said to be trying to regain his title over the suit property and recover the possession. In such circumstances, the period of limitation would be three years and not twelve years.

39. In view of the aforesaid discussion, this appeal fails and is hereby dismissed.

.....J.
(J. B. Pardiwala)

.....J.
(R. Mahadevan)

New Delhi.
20th December, 2024.