REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6595 OF 2015
(arising out of S.L.P. (Civil) No. 15513 of 2015)

L.C. HANUMANTHAPPA (SINCE DEAD) REPRESENTED BY HIS LRS. …Appellant(s)

VERSUS

H.B. SHIVAKUMAR ...Respondent

J U D G M E N T

R.F. Nariman, J.

1. Leave granted.

2. The present case arises out of cross suits filed by the parties. On 9th March, 1990, one L.C. Hanumanthappa filed a suit against one H.B. Shivakumar for permanent injunction restraining the defendants, his servants and agents from disturbing the peaceful possession and enjoyment of the suit schedule property. In this suit, namely, O.S. No. 1386 of 1990 filed before the City Civil Court, Bangalore, the plaintiff averred that he is the absolute owner, and in lawful possession and

enjoyment of the suit property. He also averred in the said suit that the schedule property is clearly distinguishable and could be identified without difficulty. According to the plaintiff, the cause of action arose when the defendant tried to trespass on the schedule property two days before the suit was filed.

3. Within a few days from the filing of this suit, the defendant in the first suit filed a suit being suit number O.S. 1650 of 1990 in the City Civil Court at Bangalore against one L.C. Ramaiah and the said Shri Hanumanthappa stating that the defendants had attempted to trespass into the suit schedule property about 15 days prior to the suit being filed, and asked for a permanent injunction against the said defendants restraining them from interfering with the peaceful possession and enjoyment of the suit schedule property. The plaintiff also claimed to be the owner in possession of the suit schedule property.

4. In the written statement to O.S. No. 1386 of 1990 dated 16th May, 1990, the defendant not only referred to his own suit which had by then already been filed, but specifically stated as follows:-

> "4. The boundaries furnished by the plaintiff to old survey site No.13, in the plaint schedule is totally

false and that has nothing to do with the boundaries mentioned in his document.

5. The Plaintiff has failed to established any relationship between old site No.13 and Corporation No.12/2, as claimed by him in the plaint.

6. The allegations that at the time of the purchase of the schedule property by the plaintiff, western boundary was a building site bearing No.14 and however subsequently the said portion left for building site has been converted as road and is being used as such since several years are false and further it is false to state that the east of the schedule property bearing building site No. 12 is situate and the same was belonging to one H. Venkataramanappa and however, the said site has been sold by him and now the said property is owned by one Sri Ahmadullah khan and he has constructed a building thereon, as alleged in para 2 of the plaint.

7. The plaintiff has purposefully distorted the boundary of his old site No. 13 to bring substantially the boundaries of site No.15, old 3, C.T.S. No. 1157 (city Survey) which exclusively belongs to the defendant.

13. The suit for injunction is not maintainable in that, he has failed to establish title with possession over site No. old 13, and that is not establishing any connection between old site No.13, and new No. 12/2, alleged to be assigned by Bangalore City Corporation or about 6-6-1989."

5. It can thus be seen that on 16th May, 1990 itself the plaintiff in O.S. No. 1386 of 1990 was put on notice that his suit

for injunction was not maintainable as he had failed to establish title over the suit schedule property.

6. Both suits were tried together, and by a judgment dated 10th March, 1999, the Court of Additional City Civil Judge at Bangalore decreed O.S. No. 1650 of 1990 and dismissed O.S. No. 1386 of 1990. In the first appeals filed against the said judgment, the High Court of Karnataka by its judgment dated 28th March, 2002 allowed R.F.A. No. 415 of 1999, and dismissed R.F.A. No. 456 of 1999, and remanded the matter back to the trial court for fresh consideration. The High Court while remanding the matter observed as follows:-

> "10. The trial Court had also appointed the Commissioner. The Commissioner after inspecting the properties has given his report. The commissioner has also been examined as PW.2. From looking into the pleadings and the evidence adduced by the parties, it is crystal clear that the dispute is in respect of the identity of two properties and to declare right and title over the properties. The respondent in this case has not disputed the sale deed which stands in the name of the appellant. Since the defendant is disputing and existence of the suit schedule property, the present application is filed for declaration of his title. The respondent has resisted the application, contending that the relief sought for by the appellant is barred by limitation and that relief sought by way of limitation. However, such a plea can be raised by the respondents by filing additional written

statement. Considering the fact that the dispute in respect of an immovable property and question of identification of two properties have been involved, as the defendant is also not disputing the sale deed of the appellant, this court to allow the application filed by the appellant for amendment of plaint seeking additional evidence.

11. Accordingly, R.F.A. No. 415/99 is allowed. The judgment and decree passed in O.S. No. 1386/90, is set aside. The matter is remanded to the Trial Court to hold fresh enquiry after giving reasonable opportunities for both the parties. The defendant is entitled to file additional written statement and also entitled to raise the question of limitation. The Trial Court shall dispose of the suit within six (6) months from to-day in accordance with law. The judgment and decree passed in O.S. 1650/90, which is the subject matter of RFA 415/99 is concerned, there is no need for this court to disturb the decree of injunction and that the decree that may be passed in O.S. 1386/90 by the Trial Court will have a bearing on the judgment and decree in O.S. No. 1650/90. In the event of appellant succeeding in O.S. 1386/90, the judgment and decree passed in O.S. 1650/90 in favour of Shivakumar for bare injunction will be unenforceable against the appellant – Hanumathappa. However, it is made clear till the disposal of O.S. 1386/90, the respondent/plaintiff-shivakumar in O.S. 1650/90 is hereby directed to maintain status-quo. If such an order is not passed, the respondent/plaintiff-Shivakumar may proceed with the construction and if he is allowed to construct and in the event of appellant succeeds in O.S. No. 1386/90, than it will lead to multiplicity of proceedings. Therefore it is necessary to direct the respondents to maintain status-quo."

7. On 1st April, 2002, the plaintiff in O.S. No. 1386 of 1990 then sought to amend the plaint in terms of the said judgment by adding para 5A to the plaint in which the plaintiff stated:-

> "5A. "The Plaintiff submit that the Defendant has no manner of right title and interest in the plaint Schedule Property. The Defendant has denied the title of the plaintiff in respect of the suit Schedule Property. Hence it is just and essential to declare that the plaintiff is absolute owner in possession of the Schedule property. If the declaration as sought is not granted the Plaintiff who is the absolute owner from 05/05/1956 and enjoying the property as absolute owner thereof, will be put great loss and prejudice. On the other hand no hardship or prejudice will be caused to the defendant if the declaration as sought is granted."

8. A decree for declaration of title to the suit schedule property was then added as a prayer to the amended plaint. On 1st August, 2002, the defendant filed an additional written statement in which the defendant stated that the said plea based on a new cause of action, namely, declaration of title, was time-barred.

9. After remand, by its judgment and decree dated 16th April, 2009, the City Civil Court at Bangalore decreed the suit O.S. No. 1386 of 1990. It turned down the plea of limitation by stating that since in the original written statement the defendant had admitted

the title of plaintiff Hanumanthappa, and only in the written statement dated 1st August, 2002 was title denied for the first time after the amendment of the plaint was moved, the relief of declaration claimed by the plaintiff would be within the period of limitation.

10. In R.F.A. No. 796 of 2009, by the impugned judgment dated 5th March, 2015, the High Court reversed the said judgment on limitation stating that the original written statement filed on 16th May, 1990 had clearly stated that the plaintiff did not have the necessary title to the suit schedule property, and as the amendment of the plaint was moved long after three years from 16th May, 1990, it was clear that it was time-barred. O.S. No. 1386 of 1990 was thus dismissed on limitation alone. The High Court also turned down the plea with reference to Section 22 of the Limitation Act, 1963 stating that on the facts of the present case limitation could not be extended because the wrong in the present case was not a continuing wrong.

11. Learned counsel for the appellant has argued that once an amendment to the plaint is allowed, it necessarily relates back to the date on which the plaint was originally filed, and since the amendment was allowed in the present case by the judgment

dated 28th March, 2002, the said amendment related back to 9th March, 1990 when the suit was originally filed. He further argued that the suit was based on title, and the title of the plaintiff was admitted in paragraph 2 of the original written statement, as was held by the trial court in its judgment dated 16th April, 2009. He therefore submitted that the impugned judgment ought to be set aside. However, he did not press the plea of continuing wrong on the facts of the present case.

12. Learned counsel for the respondent, on the other hand, argued that the plaintiff's title was clearly denied in the original written statement and three years having elapsed from the said date, the amendment was obviously time-barred. Further, the judgment dated 28th March, 2002 itself made it clear that the amendment was allowed subject to the plea of limitation being raised. He further argued that the amendment made introduced a completely new cause of action based on fresh facts and therefore any amendment made could not possibly relate back as such amendment would be clearly time-barred.

13. We have heard learned counsel for the parties. It is not disputed that Article 58 of the Limitation Act would apply to the

amended plaint inasmuch as it sought to add the relief of declaration of title to the already existing relief for grant of permanent injunction. In **Khatri Hotels Private Limited & Anr. v. Union of India & Anr.**, (2011) 9 SCC 126, this Court while construing Article 58 of the Limitation Act held as follows:-

> "Article 58 of the Schedule to the 1963 Act, which has a bearing on the decision of this appeal, reads as under:
>
> "THE SCHEDULE
>
> Period of Limitation
> [See Section 2(j) and 3]
> First Division-Suits
>
> | Description of suit | Period of limitation | Time from which period begins to run |
> |---|---|---|
> | * | * | * |
> | Part III- Suits Relating To Declarations | | |
> | * | * | * |
> | 58. To obtain any other declaration. | Three Years | When the right to sue first accrues. |
>
> Article 120 of the Schedule to the Limitation Act, 1908 (for short "the 1908 Act") which was interpreted in the judgment relied upon by Shri Rohatgi reads as under:
>
> | "Description of suit | Period of limitation | Time from which period begins to run |
> |---|---|---|
> | * | * | * |
> | 120. Suit for which no period of limitation is provided elsewhere in this Schedule. | Six years | When the right to sue accrues." |

The differences which are discernible from the language of the above reproduced two articles are:

(*i*) The period of limitation prescribed under Article 120 of the 1908 Act was six years whereas the period of limitation prescribed under the 1963 Act is three years and,

(*ii*) Under Article 120 of the 1908 Act, the period of limitation commenced when the right to sue accrues. As against this, the period prescribed under Article 58 begins to run when the right to sue first accrues.

Article 120 of the 1908 Act was interpreted by the Judicial Committee in *Bolo* v. *Koklan* [(1929-30) 57 IA 325 : AIR 1930 PC 270] and it was held: (IA p. 331)

> "There can be no 'right to sue' until there is an accrual of the right asserted in the suit and its infringement, or at least a clear and unequivocal threat to infringe that right, by the defendant against whom the suit is instituted."

The same view was reiterated in *Annamalai Chettiar* v.*Muthukaruppan Chettiar* [ILR (1930) 8 Rang 645] and*Gobinda Narayan Singh* v. *Sham Lal Singh* [(1930-31) 58 IA 125].

In *Rukhmabai* v. *Lala Laxminarayan* [AIR 1960 SC 335 : (1960) 2 SCR 253] , the three-Judge Bench noticed the earlier judgments and summed up the legal position in the following words: (*Rukhmabai case* [AIR 1960 SC 335 : (1960) 2 SCR 253] , AIR p. 349, para 33)

> "*33*. … The right to sue under Article 120 of the [1908 Act] accrues when the defendant has clearly or unequivocally threatened to infringe the right asserted by the plaintiff in the suit.

> Every threat by a party to such a right, however ineffective and innocuous it may be, cannot be considered to be a clear and unequivocal threat so as to compel him to file a suit. Whether a particular threat gives rise to a compulsory cause of action depends upon the question whether that threat effectively invades or jeopardizes the said right."
>
> While enacting Article 58 of the 1963 Act, the legislature has designedly made a departure from the language of Article 120 of the 1908 Act. The word "first" has been used between the words "sue" and "accrued". This would mean that if a suit is based on multiple causes of action, the period of limitation will begin to run from the date when the right to sue first accrues. To put it differently, successive violation of the right will not give rise to fresh cause and the suit will be liable to be dismissed if it is beyond the period of limitation counted from the day when the right to sue first accrued." [at paras 25 – 30]

14. Given this statement of the law, it is clear that the present amendment of the plaint is indeed time-barred in that the right to sue for declaration of title first arose on 16th May, 1990 when in the very first written statement the defendant had pleaded, in para 13 in particular, that the suit for injunction simpliciter is not maintainable in that the plaintiff had failed to establish title with possession over the suit property. The only question that remains to be answered is in relation to the doctrine of relation back

insofar as it applies to amendments made under Order VI Rule 17 of the Code of Civil Procedure.

15. As early as in the year 1900, the Bombay High Court in **Kisandas Rupchand v. Rachappa Vithoba**, ILR 33 Bom 644 (1900), held as follows:-

> " ... All amendments ought to be allowed which satisfy the two conditions (*a*) of not working injustice to the other side, and (*b*) of being necessary for the purpose of determining the real questions in controversy between the parties ... but I refrain from citing further authorities, as, in my opinion, they all lay down precisely the same doctrine. That doctrine, as I understand it, is that amendments should be refused only where the other party cannot be placed in the same position as if the pleading had been originally correct, but the amendment would cause him an injury which could not be compensated in costs. It is merely a particular case of this general rule that where a plaintiff seeks to amend by setting up a fresh claim in respect of a cause of action which since the institution of the suit had become barred by limitation, the amendment must be refused; to allow it would be to cause the defendant an injury which could not be compensated in costs by depriving him of a good defence to the claim. The ultimate test therefore still remains the same: can the amendment be allowed without injustice to the other side, or can it not?" [at p. 655]

16. This statement of the law was expressly approved by a three Judge Bench of this Court in **Pirgonda Hongonda Patil**

v. Kalgonda Shidgonda Patil, 1957 SCR 595, at pages 603 to 604.

17. Twenty years later, the Privy Council in **Charan Das v. Amir Khan,** 47 IA 255 (1920), stated the law as follows:-

> "That there was full power to make the amendment cannot be disputed, and though such a power should not as a rule be exercised where the effect is to take away from a defendant a legal right which has accrued to him by lapse of time, yet there are cases where such considerations are out-weighed by the special circumstances of the case."

18. This statement of the law was cited with approval in **L.J. Leach & Co. Ltd. v. Jardine Skinner & Co**., 1957 SCR 438, at pages 450 to 451.

19. The facts in the aforesaid case were that the plaintiffs had, on the basis of the material facts stated in the plaint, claimed damages on the basis of the tort of conversion. It had been held by the courts below that on the pleading and on the evidence such claim must fail. At the stage of arguments in the Supreme Court, the plaintiff applied to the Supreme Court for

amendment of the plaint by raising an alternative plea on the same set of facts, namely, a claim for damages for breach of contract for non-delivery of the goods. The respondents in that case resisted the said plea for amendment, stating that a suit based on this new cause of action would be barred by limitation. This Court, while allowing the said amendment, stated that no change needs to be made in the material facts pleaded before the court all of which were there in support of the amended prayer. In any case, the prayer in the plaint as it originally stood was itself general and merely claimed damages. Thus, all the allegations which were necessary for sustaining a claim of damages for breach of contract were already there in the plaint. The only thing that was lacking was the allegation that the plaintiffs were in the alternative entitled to claim damages for breach of contract. In the facts of the said case, this Court held:-

> "It is no doubt true that courts would, as a rule, decline to allow amendments, if a fresh suit on the amended claim would be barred by limitation on the date of the application. But that is a factor to be taken into account in exercise of the discretion as to whether amendment should be ordered, and does not affect the power of the court to order it, if that is required in the interests of justice." [at page 415]

20. It is clear that this case belonged to an exceptional class of cases where despite the fact that a legal right had accrued to the defendant by lapse of time, yet this consideration was outweighed by the special circumstances of the case, namely, that no new material fact needed to be added at all, and only an alternative prayer in law had necessarily to be made in view of the original plea in law being discarded.

21. Similar is the case with **Pirgonda Hongonda Patil**, reported in 1957 SCR 595. Here again it was held that the amendment did not really introduce a new fact at all, nor did the defendant have to meet a new claim set up for the first time after the expiry of the period of limitation.

22. In **K. Raheja Constructions Ltd. & Anr. v. Alliance Ministries & Ors.**, 1995 Supp. (3) SCC 17, this Court was seized with a belated application to amend a plaint filed for permanent injunction. Seven years after it was filed, an amendment application was moved seeking to amend the plaint to one for specific performance of contract. In turning down such amendment on the ground that it was time-barred, this Court held:-

> "It is seen that the permission for alienation is not a condition precedent to file the suit for specific performance. The decree of specific performance will always be subject to the condition to the grant of the permission by the competent authority. The petitioners having expressly admitted that the respondents have refused to abide by the terms of the contract, they should have asked for the relief for specific performance in the original suit itself. Having allowed the period of seven years to elapse from the date of filing of the suit, and the period of limitation being three years under Article 54 of the Schedule to the Limitation Act, 1963, any amendment on the grounds set out, would defeat the valuable right of limitation accruing to the respondent." [at para 4]

23. Similarly, in **Vishwambhar & Ors. v. Laxminarayan (Dead) through LRs & Anr.**, (2001) 6 SCC 163, in a suit originally filed for recovery of possession, an amendment was sought to be made after the limitation period had expired, for a prayer of declaration that certain sale deeds be set aside. This was repelled by this Court as follows:-

> "On a fair reading of the plaint, it is clear that the main fulcrum on which the case of the plaintiffs was balanced was that the alienations made by their mother-guardian Laxmibai were void and therefore, liable to be ignored since they were not supported by legal necessity and without permission of the competent court. On that basis, the claim was made that the alienations did not affect the interest of the plaintiffs in the suit property. The prayers in the plaint were inter alia to set aside the sale deeds

dated 14-11-1967 and 24-10-1974, recover possession of the properties sold from the respective purchasers, partition of the properties carving out separate possession of the share from the suit properties of the plaintiffs and deliver the same to them. As noted earlier, the trial court as well as the first appellate court accepted the case of the plaintiffs that the alienations in dispute were not supported by legal necessity. They also held that no prior permission of the court was taken for the said alienations. The question is, in such circumstances, are the alienations void or voidable? In Section 8(2) of the Hindu Minority and Guardianship Act, 1956, it is laid down, inter alia, that the natural guardian shall not, without previous permission of the court, transfer by sale any part of the immoveable property of the minor. In sub-section (3) of the said section, it is specifically provided that any disposal of immoveable property by a natural guardian, in contravention of sub-section (2) is voidable at the instance of the minor or any person claiming under him. There is, therefore, little scope for doubt that the alienations made by Laxmibai which are under challenge in the suit were voidable at the instance of the plaintiffs and the plaintiffs were required to get the alienations set aside if they wanted to avoid the transfers and regain the properties from the purchasers. As noted earlier in the plaint as it stood before the amendment the prayer for setting aside the sale deeds was not there, such a prayer appears to have been introduced by amendment during hearing of the suit and the trial court considered the amended prayer and decided the suit on that basis. If in law the plaintiffs were required to have the sale deeds set aside before making any claim in respect of the properties sold, then a suit without such a prayer was of no avail to the plaintiffs. In all probability, realising this difficulty the plaintiffs filed the application for amendment of the plaint seeking to introduce the prayer for setting

aside the sale deeds. Unfortunately, the realisation came too late. Concededly, Plaintiff 2 Digamber attained majority on 5-8-1975 and Vishwambhar, Plaintiff 1 attained majority on 20-7-1978. Though the suit was filed on 30-11-1980 the prayer seeking setting aside of the sale deeds was made in December 1985. Article 60 of the Limitation Act prescribes a period of three years for setting aside a transfer of property made by the guardian of a ward, by the ward who has attained majority and the period is to be computed from the date when the ward attains majority. Since the limitation started running from the dates when the plaintiffs attained majority the prescribed period had elapsed by the date of presentation of the plaint so far as Digamber is concerned. Therefore, the trial court rightly dismissed the suit filed by Digamber. The judgment of the trial court dismissing the suit was not challenged by him. Even assuming that as the suit filed by one of the plaintiffs was within time the entire suit could not be dismissed on the ground of limitation, in the absence of challenge against the dismissal of the suit filed by Digamber the first appellate court could not have interfered with that part of the decision of the trial court. Regarding the suit filed by Vishwambhar, it was filed within the prescribed period of limitation but without the prayer for setting aside the sale deeds. Since the claim for recovery of possession of the properties alienated could not have been made without setting aside the sale deeds the suit as initially filed was not maintainable. By the date the defect was rectified (December 1985) by introducing such a prayer by amendment of the plaint the prescribed period of limitation for seeking such a relief had elapsed. In the circumstances, the amendment of the plaint could not come to the rescue of the plaintiff.

From the averments of the plaint, it cannot be said

> that all the necessary averments for setting aside the sale deeds executed by Laxmibai were contained in the plaint and adding specific prayer for setting aside the sale deeds was a mere formality. As noted earlier, the basis of the suit as it stood before the amendment of the plaint was that the sale transactions made by Laxmibai as guardian of the minors were ab initio void and, therefore, liable to be ignored. By introducing the prayer for setting aside the sale deeds the basis of the suit was changed to one seeking setting aside the alienations of the property by the guardian. In such circumstance, the suit for setting aside the transfers could be taken to have been filed on the date the amendment of the plaint was allowed and not earlier than that." [at paras 9 and 10]

24. In **Siddalingamma and Anr v. Mamtha Shenoy**, (2001) 8 SCC 561, this Court held while allowing an amendment of the plaint in a case of *bona fide* requirement of the landlord that the doctrine of relation back would apply to all amendments made under Order VI Rule 17 of the Code of Civil Procedure, which generally governs amendment of pleadings, unless the court gives reasons to exclude the applicability of such doctrine in a given case. No question of limitation was argued on the facts in that case which would therefore be in the category of cases which would follow the line of judgments which state that costs can usually compensate for an amendment that is made

belatedly but within the period of limitation, it not being an exceptional case such as those contained in the two judgments **L.J. Leach & Co. Ltd.** and **Pirgonda Hongonda Patil** cited above.

25. In **Sampath Kumar v. Ayyakannu and Anr.**, (2002) 7 SCC 559, this Court was faced with an application for amendment made 11 years after the date of the institution of the suit to convert through amendment a suit for permanent prohibitory injunction into a suit for declaration of title and recovery of possession. This Court held:-

> "In our opinion, the basic structure of the suit is not altered by the proposed amendment. What is sought to be changed is the nature of relief sought for by the plaintiff. In the opinion of the trial court, it was open to the plaintiff to file a fresh suit and that is one of the reasons which has prevailed with the trial court and with the High Court in refusing the prayer for amendment and also in dismissing the plaintiff's revision. We fail to understand, if it is permissible for the plaintiff to file an independent suit, why the same relief which could be prayed for in a new suit cannot be permitted to be incorporated in the pending suit. In the facts and circumstances of the present case, allowing the amendment would curtail multiplicity of legal proceedings.
>
> Order 6 Rule 17 CPC confers jurisdiction on the

court to allow either party to alter or amend his pleadings at any stage of the proceedings and on such terms as may be just. Such amendments as are directed towards putting forth and seeking determination of the real questions in controversy between the parties shall be permitted to be made. The question of delay in moving an application for amendment should be decided not by calculating the period from the date of institution of the suit alone but by reference to the stage to which the hearing in the suit has proceeded. Pre-trial amendments are allowed more liberally than those which are sought to be made after the commencement of the trial or after conclusion thereof. In the former case generally it can be assumed that the defendant is not prejudiced because he will have full opportunity of meeting the case of the plaintiff as amended. In the latter cases the question of prejudice to the opposite party may arise and that shall have to be answered by reference to the facts and circumstances of each individual case. No straitjacket formula can be laid down. The fact remains that a mere delay cannot be a ground for refusing a prayer for amendment.

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 on which the application seeking the amendment was filed. (See observations in *Siddalingamma* v. *Mamtha Shenoy* [(2001) 8 SCC 561] .)

> In the present case the amendment is being sought for almost 11 years after the date of the institution of the suit. The plaintiff is not debarred from instituting a new suit seeking relief of declaration of title and recovery of possession on the same basic facts as are pleaded in the plaint seeking relief of issuance of permanent prohibitory injunction and which is pending. In order to avoid multiplicity of suits it would be a sound exercise of discretion to permit the relief of declaration of title and recovery of possession being sought for in the pending suit. The plaintiff has alleged the cause of action for the reliefs now sought to be added as having arisen to him during the pendency of the suit. The merits of the averments sought to be incorporated by way of amendment are not to be judged at the stage of allowing prayer for amendment. However, the defendant is right in submitting that if he has already perfected his title by way of adverse possession then the right so accrued should not be allowed to be defeated by permitting an amendment and seeking a new relief which would relate back to the date of the suit and thereby depriving the defendant of the advantage accrued to him by lapse of time, by excluding a period of about 11 years in calculating the period of prescriptive title claimed to have been earned by the defendant. The interest of the defendant can be protected by directing that so far as the reliefs of declaration of title and recovery of possession, now sought for, are concerned the prayer in that regard shall be deemed to have been made on the date on which the application for amendment has been filed." [at paras 7, 9, 10 and 11]

26. It is clear that on the facts in the above case the amendment was allowed subject to the plea of limitation which

could be taken up by the defendant when the trial in the case proceeds.

27. In **Van Vibhag Karamchari Griha Nirman Sahkari Sanstha Maryadit (Registered) v. Ramesh Chander and Ors.**, (2010) 14 SCC 596, this Court considered a suit which was originally filed for declaration of ownership of land and for permanent injunction. The suit had been filed on 11th February, 1991. An amendment application was moved under Order VI Rule 17 of the Code of Civil Procedure on 16th December, 2002 for inclusion of the relief of specific performance of contract. This Court in no uncertain terms refused the midstream change made in the suit, and held:-

> "In the present case, the factual situation is totally different and the appellants have not filed any suit for specific performance against the first respondent within the period of limitation. In this context, the provision of Article 54 of the Limitation Act is very relevant. The period of limitation prescribed in Article 54 for filing a suit for specific performance is three years from the date fixed for the performance, or if no such date is fixed, when the plaintiff has notice that performance is refused.
>
> Here admittedly, no date has been fixed for performance in the agreement for sale entered between the parties in 1976. But definitely by its notice dated 3-2-1991, the first respondent has

clearly made its intentions clear about refusing the performance of the agreement and cancelled the agreement.

Even though the prayer for amendment to include the relief of specific performance was made about 11 years after the filing of the suit, and the same was allowed after 12 years of the filing of the suit, such an amendment in the facts of the case cannot relate back to the date of filing of the original plaint, in view of the clear bar under Article 54 of the Limitation Act. Here in this case, the inclusion of the plea of specific performance by way of amendment virtually alters the character of the suit, and its pecuniary jurisdiction had gone up and the plaint had to be transferred to a different court. This Court held in *Vishwambhar* v. *Laxminarayan* [(2001) 6 SCC 163] , if as a result of allowing the amendment, the basis of the suit is changed, such amendment even though allowed, cannot relate back to the date of filing the suit to cure the defect of limitation (SCC at pp. 168-69, para 9). Those principles are applicable to the present case." [at paras 24, 25 and 32]

28. In **Prithi Pal Singh and Anr. v. Amrik Singh and Ors.**, (2013) 9 SCC 576, this Court was concerned with a suit claiming pre-emption under the Punjab Pre-emption Act, 1913. An amendment was sought to the plaint claiming that the plaintiff was entitled to relief as a co-sharer of the suit property. This Court after considering some of its earlier judgments held:-

> "In our opinion, there is no merit in the submissions of the learned counsel. A reading of the order passed by this Court shows that the application for amendment filed by Respondent 2 was allowed without any rider/condition. Therefore, it is reasonable to presume that this Court was of the view that the amendment in the plaint would relate back to the date of filing the suit. That apart, the learned Single Judge has independently considered the issue of limitation and rightly concluded that the amended suit was not barred by time." [at para 11]

29. Applying the law thus laid down by this Court to the facts of this case, two things become clear. First, in the original written statement itself dated 16th May, 1990, the defendant had clearly put the plaintiff on notice that it had denied the plaintiff's title to the suit property. A reading of an isolated para in the written statement, namely, para 2 by the trial court on the facts of this case has been correctly commented upon adversely by the High Court in the judgment under appeal. The original written statement read as a whole unmistakably indicates that the defendant had not accepted the plaintiff's title. Secondly, while allowing the amendment, the High Court in its earlier judgment dated 28th March, 2002 had expressly remanded the matter to the trial court, allowing the defendant to raise the plea of

limitation. There can be no doubt that on an application of **Khatri Hotels Private Limited** (supra), the right to sue for declaration of title first arose on the facts of the present case on 16th May, 1990 when the original written statement clearly denied the plaintiff's title. By 16th May, 1993 therefore a suit based on declaration of title would have become time-barred. It is clear that the doctrine of relation back would not apply to the facts of this case for the reason that the court which allowed the amendment expressly allowed it subject to the plea of limitation, indicating thereby that there are no special or extraordinary circumstances in the present case to warrant the doctrine of relation back applying so that a legal right that had accrued in favour of the defendant should be taken away. This being so, we find no infirmity in the impugned judgment of the High Court. The present appeal is accordingly dismissed.

……J.
(A.K. Sikri)

……J.
(R.F. Nariman)

New Delhi;
August 26, 2015.