



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.03.2023

CORAM

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THE HON'BLE MR.JUSTICE C.SARAVANAN

C.R.P(MD)No.1672 of 2022

and

CMP(MD)No.7345 of 2022

V.R.Madasamy

...Petitioner/Plaintiff

Vs.

Ramasamy@ Raja

... Respondent/Defendant

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 11.11.2021 passed in I.A.No.2 of 2021 in O.S.No.33 of 2015 on the file of District Munsif Cum Judicial Magistrate, sivagiri, Tirunelveli and also allow the Civil Revision Petition.

For Petitioner : Mr.A.George Stephen

For Respondent : Mr.T.Thevan

ORDER

This petition has been filed to set aside the fair and decreetal order dated 11.11.2021 passed in I.A.No.2 of 2021 in O.S.No.33 of 2015 on the file of District Munsif Cum Judicial Magistrate, sivagiri, Tirunelveli.

2.The petitioner is the plaintiff before the Trial Court in O.S.No.33 of 2015. The said suit has been filed for bare injunction. The respondent, who is the defendant before the Trial Court filed a written statement as early as on 07.09.2016. In the written statement, the respondent/defendant has stated that the property was purchased by his father namely, Late.Thangasamy Nadar on 19.01.1974. Thereafter, he has executed a Will in favour of the respondent/defendant on 23.05.2003.

3.The petitioner has filed an application in I.A.No.2 of 2021 for amendment of the plaint. The Trial Court has dismissed the application on the ground that the petitioner has filed an application belatedly and that the petitioner has not proved any encroachment of the property. It is further submitted that the issue relating to limitation can be decided by the Trial Court at the time



of final hearing and the Trial Court come to the conclusion at there was no encroachment.

4.The learned counsel for the respondent submits that the order of the Trial Court is well reason and requires no interference.

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5.I have considered the argument advanced by the learned counsel for the petitioner and the learned counsel for the respondent.

6.It is noticed that the Trial Court has not framed a additional issue. The petition is seeking for amendment of plaint for declaration of title. The application for amendment has been rejected on the ground of limitation. No doubt the written statement was filed as early as on 07.09.2016. The amendment that is sought for by the petitioner is not at the fag end of the trial or at the stage of argument if the case.

7.Considering the above, I am inclined to interfere with the impugned order dated 11.11.2021, by directing the Trial Court to permit the petitioner/plaintiff to amend the plaint and frame a additional issue. It is needless to say, the trial Court shall also consider the issue relating to limitation arising out of the amendment as a preliminary issue after the trial is completed. Since, the suit is of the year 2015, the District Munsif Cum Judicial Magistrate, sivagiri, Tirunelveli, is therefore directed to expedite the trial in O.S.No.33 of 2015 and pass a final judgment and decree preferably within a period of 12 months from the date of receipt of a copy of this order.

8.This Civil Revision Petition stands ***disposed of**. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (C.O)

(*)Corrected as per the order of this Court dated 06/06/2023 made in CRP(MD) 1672/2022

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/06/2023

Sub Assistant Registrar(CS)

dss

(*)To be Substituted in the orders already despatched on 04.05.2023.



C.R.P(MD)



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To

The District Munsif Cum Judicial Magistrate,
Sivagiri, Tirunelveli.

+1 CC to M/s.A.GEORGE STEPHEN, Advocate (SR-18614[F] dated
30/03/2023)

+1 CC to M/s.T.THEVAN, Advocate (SR-18623[F] dated 30/03/2023)

C.R.P (MD) No.1672 of 2022

and

CMP (MD) No.7345 of 2022

28.03.2023

SI/(02.05.2023) 3P/ 4C

DL/(26.06.2023)/ 3P/4C