

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2015

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P(PD).No.4570 of 2015
and M.P.No.1 of 2015

1.T.Shanthi
2.T.Gokulakrishnan
3.T.Nishanth
4.Minor T.Monisha
5.Minor T.Janani
Minors 4 & 5 are rep. by
their next friend, mother & natural
guardian T.Shanthi .. Petitioners/Defendants 8 to 12
Vs.

1.S.Mohammed Kaleelur Rahman
2.S.Khader Mohideen .. Respondents1 and 2/Plaintiffs 1 & 2
K.Thanikachalam (deceased)

3.Elumalai
4.R.Thangavel
5.N.Balakrishnan
6.S.Santhi
7.Prema
8.Ashok Kumar .. Respondents 3 to 8
(R3 to R8 are given up in the suit
in O.S.No.12848/2010 & the suit
dismissed.)

Prayer:- Civil Revision Petition is filed under Article 227 of
Constitution of India, against the fair and decreetal order dated

19.08.2015 in I.A.No.13576 of 2014 in O.S.No.12848 of 2010 on the file of the learned VI Additional Judge, City Civil Court, Chennai.

For Petitioners :Mr.D.Murthy

ORDER

The Civil Revision Petition is filed against the fair and decreetal order dated 19.08.2015 in I.A.No.13576 of 2014 in O.S.No.12848 of 2010 on the file of the learned VI Additional Judge, City Civil Court, Chennai.

2.The respondents herein as the plaintiffs filed a suit in O.S.No.12848 of 2010 for the following reliefs:

"a) directing the defendants 2 to 6 being the legal heirs of first deceased defendant to enforce their obligation under the sale agreement dated 04.01.2008 to execute the sale deed thereby selling his undivided 1/6th share described in schedule B in performance of his obligation under the sale agreement dated 04.01.2008 and consequently, direct them to deliver the vacant possession of B schedule property by getting vacant possession of the portions which are in the respective possession of the defendants 2 to 6 constructively on payment of their lease amounts

by them and on such failure to execute the sale deed and recovery possession through Court process;

b) to grant permanent injunction restraining the defendants from alienating or encumbering and dealing with A schedule property either by sale, mortgage, lease, gift or in any other manner;

c) to grant permanent injunction restraining the defendants from interfering with the plaintiff's peaceful possession and enjoyment of the C schedule property;

d) directing the defendants 2 to 6 being the legal heirs of the 1st deceased defendant to pay a sum of Rs.7,00,000/- towards compensation for damages to the plaintiffs.

e) pay the cost of the suit;

3. At the time of filing the suit, the respondents 1 and 2/plaintiffs 1 and 2 have filed an application for interim injunction in respect of C schedule property, interim injunction has been granted and subsequently, it was not extended. The revision petitioners, who are defendants 8 to 12 in the suit, filed a written statement stating that the suit is barred by limitation.

4. During pendency of the suit, the plaintiffs have come forward with an application in I.A.No.13576 of 2014 under Order 6 Rule 17 C.P.C. for amending the plaint for recovery of possession stating that since interim injunction has already been granted and the same was not extended, the defendants 8 to 12 leased out C Schedule property. Hence, the respondents 1 and 2/plaintiffs were forced to file the application for amendment. The trial Court, after hearing both sides, allowed the application, against which, the present revision has been preferred by the defendants 8 to 12.

5. Learned counsel for the revision petitioners/defendants 8 to 12 submits that if the suit has been amended by including the prayer for recovery of possession, it is barred by limitation as per Article 54 of the Limitation Act. That factum was not considered by the trial Court. Therefore, he prayed for allowing the revision.

6. At the time of admission, argument of the learned counsel for the revision petitioners is heard in length.

7. On perusal of the typed set of papers, it reveals that the respondents 1 and 2/plaintiffs filed the suit for the aforesaid

reliefs on the basis of the sale agreement dated 04.01.2008 and receipt given by the first defendant. Notice has also been issued by the plaintiffs to the defendants on 20.06.2008 and suit has been filed in the year 2010 within two years from the date of sale agreement.

8.The only point to be decided is that whether the impugned order passed by the trial Court for allowing the amendment application is sustainable? On perusal of the affidavit filed in support of the application, it was stated that at the time of filing the suit, injunction has been granted in respect of C schedule property, wherein, the plaintiffs have put in possession after receipt of amount from the first defendant. But interim injunction has not been extended. So the property has been leased out by the defendants to the third party. Hence, the plaintiffs want to amend the prayer for recovery of possession of C schedule property in respect of injunction.

9.It is well settled dictum of the Honourable Apex Court that to do substantial justice, amendment can be allowed at any point of time. In the case on hand, during pendency of the suit only, the

plaintiffs were dispossessed from the C schedule property, where they had stored materials relating to their business. It shows that since the interim injunction has not been extended, the plaintiffs were dispossessed. In such circumstances, the plaintiffs/respondents 1 and 2 were forced to file the suit for recovery of possession of C schedule property.

10. Furthermore, this Court has to decide whether the relief of recovery of possession is barred by limitation? According to the revision petitioners/defendants 8 to 12, the suit is barred by limitation as per Article 54 of the Limitation Act.

11. So it is appropriate to extract Article 54 of the Limitation Act, which reads as follows:

“For specific performance of a contract, period of limitation is three years, the date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.”

12. The suit has been filed in the year 2010 and the sale agreement was executed on 04.01.2008, at that time, the plaintiffs were put in possession of the C schedule property. At the time of

filing suit, interim injunction has been granted. Since it was not extended, the plaintiffs were dispossessed. So the plaintiffs filed the application for amendment to include the prayer for recovery of possession. Under such circumstances, the amendment sought for is not barred by limitation. The trial Court has considered all the aspects in proper perspective manner and came to the correct conclusion, therefore, the order passed by the trial Court does not suffer any infirmity or illegality and it is hereby confirmed. The civil revision petition deserves to be dismissed and it is hereby dismissed.

13.In the result, the Civil Revision Petition stands dismissed.
No costs. Consequently, connected Miscellaneous Petition is closed.

14.12.2015

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Index:Yes/No

To

The VI Additional Judge,
City Civil Court, Chennai.

R.MALA,J.

Kj

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