

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

C.R.P.(P.D.) No.1039 of 2015
and MP.No.1 of 2015

1. Palanisamy Gounder
2. Ramaswamy Gounder

...Petitioners/Defendants

versus

- 1.Kandaswamy
- 2.R.Subramaniam
- 3.K.Subramaniam
- 4.S.Govindasamy
- 5.Nallammal
- 6.Kondathai
- 7.Sakunthala
- 8.Selvi
- 9.Bahuavathi
- 10.R.P.Subramaniam
- 11.Vaideeswaran
- 12.Chinnasamy
- 13.Subramaniam
- 14.Sundarathal
- 15.Subbathai
- 16.Kamalam @ Thangamani
- 17.Mylathal
- 18.Mayangathai
- 19.Sundarathal
- 20.Avinashiappan
- 21.Periyasamy
- 22.Samiappan
- 23.Saraswathy

...Respondents/Defendants

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, as against the petition and order dated 23.01.2015 passed in I.A.No.1039 of 2014 in O.S.No.64 of 2013 on the file of the District Munsif Court, Avinashi.

For Petitioners : Mr.N.Manokaran

For Respondents 1 to 4 : Mr.K.Balakirshnan

For Respondents 12 to 22 : Given up

ORDER

The respondents filed a suit before the Trial Court in O.S.No.357 of 2006 which was re-numbered as O.S.No.64 of 2013. In the said suit, after about nine years, the petitioners filed an application invoking Order 7 Rule 11 C.P.C., contending that the suit is barred by limitation and there is no cause of action. The application was dismissed by the Trial Court. The said order is under challenge in this Civil Revision Petition.

2. Heard the learned counsel for the petitioners and the learned counsel for the respondents 1 to 4.

3. The petitioners filed the application in question after a period of nine years. The Trial Judge was of the view that the question of limitation is a mixed question of fact and law and as such, plaint cannot be axed by invoking Order 7 Rule 11 CPC. The Trial Judge made it very clear that the question of limitation would be considered during the course of trial.

4. There is no question of axing the plaint at the threshold on the ground that the suit is barred by limitation. The question of limitation would be decided by the Trial Court on the basis of evidence. In fact, the Trial Judge made it very clear that all the points raised by the petitioners would be considered later.

5. In view of the reasonings given by the learned Trial Judge, I do not find any ground made out by the petitioners to set aside the order dated 23.01.2016 in I.A.No.1039 of 2015.

6. The petitioners are at liberty to take up all the points both on facts and on limitation before the Trial Court.

K.K.SASIDHARAN, J.

smi

7. The Civil Revision Petition is disposed of, with the above observations. No costs. Consequently, connected miscellaneous petition is closed.

27.09.2016

Index : Yes/No
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To

1. The District Munsif Court, Avinashi.

C.R.P.(P.D.) No.1039 of 2015