

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 26.10.2016

Delivered on: 04.11.2016

CORAM

THE HONOURABLE THIRU JUSTICE **V. PARTHIBAN**

C.R.P.(PD)No.1173 of 2012 &
M.P.No.1 of 2012

Vijaya

.... Petitioner

vs

1. Ranibai Ammal
2. Sankar Singh
3. Sekar Singh
4. Pooran Singh
5. Kamalabai
6. Sulochana Bai
7. Vitoba Bai
8. Sugunabai
9. Sudha
10. Manjula
11. Sundar
12. Sheela
13. Logu
14. Reka
15. Hari Babu
16. Durgabai
17. Balaji
18. Prema

.... Respondents

Civil Revision Petition filed under Article 227 of the Constitution
of India against the order

For petitioner : Mr.S.Sounthar

For respondent : Mr.R.Rajesh Vivekananthan-R1
RR2 to R18 given up

ORDER

This Civil Revision Petition has been filed against the order passed by the trial Court dated 12.08.2011 in I.A.No.2183 of 2010 in O.S.No.303 of 1996, allowing the application filed by the first respondent herein, seeking amendment to the plaint under Order 6 Rule 17 CPC.

2. Heard the learned counsel appearing for the parties and perused the entire materials available on record.

3. The first respondent herein is the plaintiff. She filed a suit in O.S.No.303 of 1996 before the trial Court for declaration and permanent injunction as against the petitioner herein and the respondents 2 to 18 herein. Pending the suit, the first respondent/plaintiff moved an interlocutory application in I.A.No.2183 of 2010, seeking to amend the plaint in O.S.No.303 of 1996.

4. In the said interlocutory application, certain amendments were sought for, including recovery of possession during the pendency of the suit on the basis of the case set up by the defendants in the

suit.

5. The said application filed by the first respondent/plaintiff was resisted by the petitioner herein and defendants in the suit on the ground it was filed after a lapse of several years and the same was hit by law of limitation. There was also no proper explanation for the said ordinate delay. Further, it was contended that there was a clear evidence in collateral proceedings before the Judicial Magistrate, accepting the fact that the possession was with the petitioner herein as early as in the year 2002 much before filing of the suit by the first respondent/plaintiff and hence, the subject interlocutory application lacks bona fide and liable to be dismissed.

6. The case of the first respondent/plaintiff before the trial Court was that the amendment sought for is necessary in view of the subsequent development and the case set up by the petitioner herein and other defendants in the suit and without amendment being allowed, there would not be any effective adjudication of rights of the parties.

7. After adverting to the rival claims of the parties, the learned trial Judge allowed the IA 2183 of 2010 in O.S.No.303 of 1996 vide

order dated 12.8.2011, which is challenged in this revision.

8. The learned trial Judge has concluded that it was only 18th defendant (petitioner herein) contesting the suit filed by the plaintiff (first respondent herein) and the specific case of the first respondent/plaintiff is that she has been in possession and enjoyment of the suit property since the date of sale in her favour and the contentions of the respective parties can be decided at the time of trial only. In the circumstances, the learned trial Judge allowed the application filed by the first respondent/plaintiff.

9. The learned trial Judge has reasoned that the proposed amendment would not alter the structure of the suit and that it would neither introduce a new case nor change the cause of action. Moreover, it is to be seen that as far as the delay in filing the application, the case of the first respondent/plaintiff before the trial Court was that originally the petitioner/18th defendant, who was alone contesting the suit, was set *ex parte* and consequently, an *ex parte* decree was passed on 30.11.2009. However on application moved by the petitioner/18th defendant (I.A.No. 621 of 2010), the said *ex parte* decree was set aside and the suit was restored vide order dated 9.11.2010. Only thereafter, the the petitioner/18th defendant

encroached upon the suit property which prompted the first respondent/plaintiff to file the subject I.A., seeking amendment under Order 6 Rule 17 CPC. Therefore, there seems to be a dispute as regards the possession of the suit property either by the plaintiff or the 18th defendant during the pendency of the suit. Therefore, the learned trial Judge has rightly allowed the amendment with an observation that the issues could be decided at the time of trial. Aggrieved by the said order, 18th defendant in the suit, the petitioner herein has filed the present revision.

10. The learned counsel appearing for the parties have reiterated their submissions and on behalf of the the revision petitioner, reliance has also been emphatically placed on the law of limitation for entertaining the I.A., after enormous delay. However, it ought to be seen from the facts mentioned above that without the so-called amendment, the suit cannot be decided effectively and the rights of the parties cannot be determined in full. In the circumstances, the learned trial Judge has rightly allowed the proposed amendment and left the issues open for adjudication of the same at the time of trial. In such circumstances, this Court is of the view that the petitioner/18th defendant would not in any way be prejudiced by the order passed by the learned trial Judge.

11. On behalf of the petitioner, reliance was placed upon the decision reported in "2011 (6) CTC 477 (***Chinnu Padayachi and another versus Dhanalakshmi and others***) wherein, it was held that when there is no disputed question of fact regarding the limitation, the prayer for mandatory injunction is clearly barred by limitation and if the suit prayer is allowed, it would prejudice the defendants and cause grave injustice to them.

12. This Court, though in agreement with the ratio laid down by this Court in the above referred to decision, however, is of the view that as stated above, the facts as to the knowledge of the first respondent/plaintiff herein about either possession or encroachment, cannot be said to be admitted. In any event, no prejudice would be caused to the revision petitioner/18th defendant if the said issue of limitation is decided at the time of trial. In these circumstances, this Court is of the view that the order passed by the trial Judge requires no interference.

For the foregoing reasons, this Civil Revision Petition fails and it is dismissed. No costs. Consequently, connected MP is closed. However, as the suit is of the year 1996, the trial Court is directed to expedite the trial and dispose of the suit within a period of six months

from the date of receipt of a copy of this order.

Index: Yes/No
Internet: Yes/No
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04-11-2016

V.PARTHIBAN, J.

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Pre delivery Order in
CRP PD No.1173 of 2012

04-11-2016

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