

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **04.11.2016**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

C.R.P.(P.D.) Nos.1916, 1917 of 2016 and
CMP No.9987 of 2016

P.Udhayakumar

...Petitioner in both CRPs

versus

1.D.Thulasi

2.Dharmalingam

...Respondents in both CRPs

PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 03.02.2016 in I.A.Nos.784 and 785 of 2014 respectively in O.S.No.179 of 2007 by the Principal District Munsif, Kancheepuram.

For Petitioner : Mr.S.D.S.Philip

For Respondents : No appearance

ORDER

The petitioners filed two interlocutory applications in I.A.Nos.784 and 785 of 2014 before the District Munsif Court, Kancheepuram to reopen the case and to amend the plaint in O.S.No.179 of 2007. The applications were dismissed by the learned Trial Judge on the ground of delay and limitation. The orders are under challenge in these civil revision petitions.

2. Heard the learned counsel for the petitioner. None appears on behalf of the respondent.

3. The suit in O.S.No.179 of 2007 was filed by the petitioner for injunction. The respondents filed written statement and contested the suit.

4. The petitioner filed applications in I.A.Nos.784 and 785 of 2014 to reopen the case and to amend the plaint by seeking a declaratory relief. The applications were dismissed on the ground of delay and limitation.

5. According to the learned trial Judge, written statement was filed long back. The present prayer for declaration is therefore barred by limitation.

6. While considering an application for amendment, the Court has to consider certain basic facts. The question of limitation is a mixed question of fact and law. Such question has to be considered by the Trial Court along with other issues. Similarly, delay alone cannot be a

reason to decline amendment. I am therefore of the view that the learned Judge was not correct in rejecting the applications on the ground of delay and limitation.

7. In the result, the order dated 03.02.2016 is set aside. The applications in I.A.Nos.784 and 785 of 2014 are allowed. It is needless to point out that the respondents should be given liberty to file additional written statement.

8. The Civil Miscellaneous Petitions are allowed with the above observation. No costs. Consequently, connected miscellaneous petition is closed.

04.11.2016

Index : Yes/No
svki

To

District Munsif Court, Kancheepuram

K.K.SASIDHARAN, J.

(svki)

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