

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.09.2016

CORAM

THE HONOURABLE MR. JUSTICE K.K.SASIDHARAN

C.R.P.(PD) No.2033 of 2016
and
C.M.P.No.10591 of 2016

1.Madhayan
2.Chinnasamy
3.Perumal
Petitioners

...

vs.

Murugammal
Respondent

...

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 28.01.2016 in I.A.No.804 of 2015 in O.S.No.46 of 2013 on the file of the District Munsif, Palacode.

For Petitioners : Ms.R.Poornima

For Respondent : Mr.V.R.Anna Gandhi

ORDER

The respondent filed a suit for declaration and injunction. The petitioners resisted the suit on the ground that the decree was

passed in O.S.No.378 of 1990 by the District Munsif of Dharmapuri and as such, the respondent is not entitled to another decree of declaration and injunction.

2. Subsequently, the parties adduced evidence. The petitioners made an attempt to mark the Judgment and Decree in O.S.No.378 of 1990. The respondent, thereafter, filed an Application in I.A.No.804 of 2015 to amend the plaint for the purpose of adding a prayer for declaration that the Judgment and Decree passed in O.S.No.378 of 1990 is null and void. The Application was allowed by the Trial Court notwithstanding the objection raised by the petitioners. Feeling aggrieved, the petitioners are before this Court.

3. The learned counsel for the petitioners contended that the decree was passed way back on 30.07.1990. It was a contested decree. The decree has become final. Even if the respondent is permitted to amend the plaint, still she is not entitled to a decree as the suit would be barred by limitation.

4. The learned counsel for the respondent submitted that within a period of 3 years from the date of filing written statement, the respondent has filed an Application for amendment and as such,

there is no question of limitation.

5. There is no dispute that the respondent was not a party to the suit in O.S.No.378 of 1990. The petitioners have no case that the respondent was aware of the decree in O.S.No.378 of 1990 before filing written statement on 3.7.2013. It is true that within a reasonable period after filing written statement, the respondent has not taken action to file an application for amendment. That would not preclude the respondent from filing the application in view of the attempt made by the petitioners to mark the Judgment and Decree in O.S.No.370 of 1990. It is a matter of record that the petitioners have already marked the Judgment and Decree in O.S.No.370 of 1990. The respondent has taken up a specific contention that she came to know of the document only from the written statement dated 3.7.2013. The respondent is therefore, *prima facie*, correct in her contention that the suit was filed within a period of 3 years from the date of knowledge of the said Judgment and Decree and as such, it is maintainable. I am therefore of the view that the learned trial Judge was correct in allowing the Application.

6. In the result, the Civil Revision Petition is dismissed. No costs. Connected Miscellaneous Petition is closed. It is open to

the defendants to file additional written statement if so they are advised.

23.09.2016

Index : yes / no

Internet :yes / no
asvm

Copy to :

The District Munsif, Palacode.

K.K.SASIDHARAN, J.

(asvm)

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