

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **20.10.2016**

CORAM:

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

C.R.P.(P.D.) No.2088 of 2016 and
CMP.No.10908 of 2016

M.Palanisamy

...Petitioner

versus

Muthammal

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 23.03.2016 made in I.A.No.1644 of 2015 in O.S.No.113 of 2012 on the file of 2nd Additional District and Sessions Court, Tirupur.

For Petitioner : Mr.S.Nambi Arooran
M/s.Ajmal Associates

For Respondent : Mr.K.Govi Ganesan

ORDER

The respondent filed a suit for partition in O.S.No.113 of 2012. The suit was opposed by the petitioner by filing written statement, wherein, it was contended that by way of a Release Deed, the property was released to him. Thereafter, the respondent filed an application in I.A.No.1644 of 2015 for amendment of the plaint for the purpose of

challenging the Release Deed. The application was allowed by the learned Trial Judge, notwithstanding the objection raised by the petitioner. Feeling aggrieved, the petitioner is before this Court.

2. The learned counsel for the petitioner contended that the Release Deed was executed on 05.05.2003 and as such, the suit to declare the Release Deed as null and void is barred by limitation. According to the learned counsel, the respondent was having knowledge with regard to the Release Deed and in spite of such knowledge, amendment was not made within a reasonable period.

3. I have also heard the learned counsel for the respondent.

4. The suit in O.S.No.113 of 20201 was instituted by the respondent for partition. The petitioner has taken up a contention that in view of the Release Deed executed in his favour, the respondent is not entitled to a share in the property. It is true that only after filing written statement, the respondent filed the application for amendment of the plaint. The written statement was filed on 05.12.2012. The petition in I.A.No.1644 of 2015 was filed on 05.12.2015. The amendment is opposed primarily on the ground that the very prayer is

barred by limitation. The question of limitation is a mixed question of fact and law and that has to be considered by the Trial Court by taking evidence.

5. The learned Trial Judge considered the background facts and rightly allowed the application. I do not find any error or illegality in the said order warranting interference, by exercising the revisional jurisdiction under Article 227 of the Constitution of India.

6. In the up shot, I dismiss the Civil Revision Petition. No costs. Consequently, connected miscellaneous petition is closed.

7. The petitioner is given liberty to file an additional written statement. It is open to the petitioner to raise all contentions available to him including limitation. Since the suit is now contested on the ground of limitation also, necessarily, issue with regard to limitation shall also be framed by the learned Trial Judge.

20.10.2016

Index:Yes/No
svki

K.K.SASIDHARAN, J.

(svki)

To

The II Additional District and Sessions Court, Tiruppur.

C.R.P.(P.D.) No.2088 of 2016

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