

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2016

CORAM

THE HONOURABLE MR. JUSTICE K.K.SASIDHARAN

C.R.P.(PD) No.2309 of 2016
and
C.M.P.No.11924 of 2016

V.Baskar ... Petitioner

VS.

Anbarasi
Respondent ...

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair Order and Decretal Order dated 01.06.2016 made in I.A.No.342 of 2016 in O.S.No.370 of 2011 on the file of the Additional District Munsif, Alandur.

For Petitioner : Mr.S.Balasubramanian

For Respondent : Mr.G.Surya Narayanan

ORDER

The respondent initially filed a suit for permanent injunction. The Trial Court issued a Commission. The respondent based on the Commissioner's report filed an Interlocutory Application for amendment of the plaint. The Application was allowed by the Trial Court. The said order is under challenge in this Civil Revision Petition.

2. The learned counsel for the petitioner contended that even as per the affidavit, the respondent was aware of the alleged acts done by the respondent at least on 5.1.2013. However, the application was filed only after 3 years. According to the learned counsel, due diligence was not shown and as such, the learned Trial Judge was not correct in allowing the Application.

3. The learned counsel for the respondent supported the order passed by the Trial Court.

4. The Application was filed by the respondent for amendment. The Application was opposed by the petitioner, primarily, on the ground that as on the date on which the said application was filed, the prayer for amendment was barred by limitation. According to the petitioner, the respondent was aware of the alleged acts even on 5.1.2013, the date on which the Advocate Commissioner inspected the property. Even then, action was not taken to amend the plaint within the statutory period.

5. There is no question of dismissing the Application for amendment on the ground of limitation. The question of limitation is a mixed question of facts and law. The Trial Court is expected to

consider the factual matrix as contained in the affidavit filed in support of the amendment application and decide as to whether such an amendment can be allowed. There is no question of considering the point of limitation or the merits of the matter in an application filed for amendment of the plaint. I am, therefore, of the view that no interference is necessary in the order under challenge.

6. It is open to the petitioner to file Additional Written Statement taking up all contentions available to him. In case, a plea of limitation is taken, necessarily, an issue to that effect shall be framed by the Trial Court.

7. The Civil Revision Petition is disposed of, with the above direction. No costs. Connected Miscellaneous Petition is closed.

28.11.2016

Index : yes / no

Internet :yes / no

asvm

K.K.SASIDHARAN, J.

(asvm)

Copy to:
The Additional District Munsif,
Alandur.

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