

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.3011 of 2016

1. Jagadeesan
2. Sakthivel
3. Sarangapani ...Petitioners

vs.

G.Suresh ...Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and final order dated 27.10.2015 passed by the Principal District Munsif Court, Gingee, made in I.A.No.1097 of 2015 in O.S.No.13 of 2013.

For Petitioner : Mr.R.Jawahar

For Respondent : Mr.G.Rajan

ORDER

The respondent filed a suit for declaration and injunction before the Trial Court in O.S.No.13 of 2013. The petitioners entered appearance and contested the suit. The parties thereafter went to trial.

2. The respondent, after partly cross-examining the witnesses on the side of the petitioners, filed an application in I.A.No.1097 of 2015 for amendment of the plaint to incorporate a plea for recovery of

possession. The application was allowed by the learned Trial Judge, notwithstanding the objection raised by the petitioners. The petitioners are therefore, before this Court.

3. Learned counsel for the petitioners contended that even in the written statement filed originally, the petitioners have taken up the contention in respect of the construction put up by them long before the institution of the civil suit. However, no action was taken by the respondent to amend the plaint. It was only after the commencement of trial, an application was filed.

4. According to the learned counsel for the petitioners, the relief as on the date on which the amendment was allowed was barred by limitation. Since the said aspect was not considered by the learned Trial Judge, the impugned order is liable to be set aside.

5. The suit in O.S.No.13 of 2013 was originally filed by the respondent for a decree of injunction and declaration. It is true that the respondent has taken up the contention with regard to the plea for recovery of possession only after the commencement of trial by filing an application for amendment of the plaint. The petitioners are aggrieved

primarily on account of the fact that the prayer as on the date on which the amendment was allowed was barred by limitation.

6. The merits of the case consequent to the amendment made to the plaint cannot be decided at the time of considering the application. The Trial Court is bound to frame an issue with regard to limitation and adjudicate the same. I am therefore of the view that there is no merit in the contention of the petitioners.

7. The petitioners are given liberty to file an additional written statement to take up the plea of limitation. It is open to them to raise an issue with regard to limitation, which shall be framed by the Trial Court and an adjudication shall be made with respect to such issue.

8. This Civil Revision Petition is disposed of with the above direction. No costs. Consequently, connected C.M.P.No.15203 of 2016 is closed.

20.10.2016

aeb

K.K.SASIDHARAN,J.

(aeb)

To
The Principal District Munsif Court, Gingee.

C.R.P.(PD) No.3011 of 2016

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