

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 02.11.2016
CORAM

The Hon'ble Mr.Justice K.K.Sasidharan

C.R.P.(PD)No.656 of 2016
and
C.M.P.No.3348 of 2016

Begi Subramani Reddy

.. Petitioner

Vs

K.Devaraj

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order and decretal order, passed by the learned District Munsif, Katpadi, Vellore District, in I.A.No.711 of 2015, in O.S.No.63 of 2010, dated 26.10.2015.

For Petitioner : M/s. Nirmala Devi for
Mr.T.Dhanyakumar

For Respondents : Mr.E.Kannadasan

ORDER

The petitioner filed a Suit for declaration and injunction before the District Munsif Court, Katpadi, Vellore. The Suit was contested by the respondent, by filing written statement.

2. The petitioner filed an Application in I.A.No.711 of 2015, for amendment of the plaint. The Application was opposed by the respondent, on the ground of limitation.

3. The learned trial Judge dismissed the Application by observing that new prayer is barred by limitation. The learned trial Judge further observed that the respondent has already filed a Civil Suit, in O.S.No.174 of 2010, and as such, the amendment of the plaint is unnecessary.

4. Feeling aggrieved, the unsuccessful petitioner in Application No.711 of 2015, is before this Court.

5. Heard the learned counsel appearing on behalf of the petitioner and the learned counsel for the respondents.

6. The Suit is one for declaration and injunction. The petitioner being the plaintiff, wanted certain amendments to be made in the plaint, taking into account the Sale Deed relied on by the respondent. According to

the respondent, the Sale Deed was executed on 29.09.1995, and as such, even if the amendment is allowed, the Suit with a prayer for setting aside the said document is barred by limitation.

7. The learned trial Judge rejected the Application primarily on the ground of limitation. The learned trial Judge also observed that no supportive documents were filed by the petitioner to substantiate his contention in the amended plaint.

8. There is no question of considering the limitation or sufficiency of evidence produced by the party while deciding the Application for amendment. The question of limitation is a mixed question of fact and law. It should be decided by the trial Court during trial. Similarly, there is no question of considering the merits of the case pleaded in the Application under Order VI Rule 17 CPC. The petitioner should be given reasonable opportunity to produce documents in support of his case, as pleaded in the amended plaint. Even after amendment, the burden of proof is on the petitioner to prove that a situation has arisen to set aside the Sale Deed, dated 29.09.1995. This aspect was not considered by the trial Court. I am,

therefore, of the view that the impugned Order is liable to be set aside.

9. In the result, the Order, dated 26.10.2015, is set aside. The Application in I.A.No.711 of 2015 is allowed. It is needless to point out that the respondent should be given an opportunity to file additional written statement. In case, issue of limitation is taken by the respondent in the additional written statement, necessarily, an issue to the said aspect has to be framed by the trial Court.

10. The learned trial Judge is directed to dispose of the Suit as expeditiously as possible.

11. The Civil Revision Petition is allowed, as indicated above. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

02.11.2016

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Index : Yes/No

Internet ; Yes/No

To
The District Munsif, Katpadi,
Vellore District.

K.K.Sasidharan,J.,

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