



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.R.P (MD) No.1595 of 2016 (PD)

and

C.M.P. (MD) .No.7788 of 2016

Oriyur Punitha Arulanandhar,
Oriyur Punitha Arulanandhar Pangu Thandhai
Aalayam, Oriyur Post,
Thiruvadanai Taluk,
Ramanathapuram District.

.. Petitioner

Vs.

Abdul Gafoor (Died)

1.Akbar Ali
2.Mohammed Mahroof
3.Peer Mohamed
4.Ghulam Mohammed
5.Baskaran
6.Sebastian
7.Abdul Rahman

.. Respondents

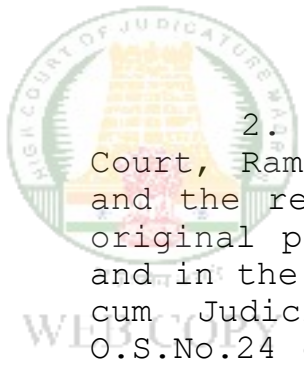
Prayer : This Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 22.06.2016 passed in I.A.No.67 of 2016 in O.S.No.24 of 2004 on the file of the District Munsif cum Judicial Magistrate, Thiruvadanai.

For Petitioner : Mr.S.Manohar

For Caveator : Mr.D.S.Haroon Rasheed

ORDER

This revision is directed against the order of the learned District Munsif cum Judicial Magistrate, Tiruvadanai, in I.A.No.67 of 2016 in O.S.No.24 of 2004.



2. The suit in O.S.No.135 of 2000 was filed before the Sub Court, Ramanathapuram, by one Abdul Kaboor, against the petitioner and the respondents 3 to 5 for partition. After the demise of the original plaintiff, the respondents 1 and 2 were brought on record and in the meanwhile the suit was transferred to the District Munsif cum Judicial Magistrate Court, Tiruvadanai and renumbered as O.S.No.24 of 2004 and the respondents 6 and 7 were also impleaded. Pending suit, the plaintiffs filed I.A.No.67 of 2016 under Order 6 Rule 17 for amendment of the plaint.

3. The case of the plaintiffs is that during the pendency of the suit, the defendants have put up construction and they have to be removed by a decree of mandatory injunction. The application was resisted by the petitioner by filing a counter stating that the application was filed after 11 years of the suit and at this stage, the plaint cannot be amended. The Trial Court allowed the application. Against that order, the present revision is filed.

4. Heard the learned counsel for the petitioner as well as the respondents and perused the records.

5. Mr. S. Manohar, learned counsel appearing for the petitioner would submit that the suit was filed in the year 2000, however, this application was filed after 16 years, without any valid reason. It is further submitted that the suit was filed only for partition and in the final decree proceedings, the value of the superstructure has to be assessed and shares have to be allotted and there is no question of issuing mandatory injunction.

6. Per contra, the learned counsel appearing for the caveator/R1 would submit that though the suit came to be filed long back, but the trial is not yet commenced and the petitioner now contends that the superstructure was put up long back, in the written statement and in the counter filed to the amendment application, it is not specifically stated that at the time of filing of the suit, they had already put up construction. It is further urged that when the plaintiffs have specifically alleged that during the pendency of the suit, the other side have put up construction and it has to be decided after trial and at this stage the application cannot be rejected on the ground of limitation.

7. It is seen from the records that the trial court allowed the application by observing that the issue, whether the construction was put up, prior to the suit or during the pendency of the suit can be decided only after the trial and the proposed amendment would not alter the character and nature of the suit.

8. It is settled law that in the application for amendment, the merits of the case cannot be decided. Admittedly, the trial has not commenced yet. In such circumstances, the trial Court shall frame necessary issues, on the question of limitation and decide the same on merits and in accordance with law.



9. With the above observation, the Civil Revision Petition is dismissed. Consequently, connected miscellaneous petition is closed. No Costs.

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Sd/-
Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar

To

The District Munsif cum Judicial Magistrate,
Tiruvadanai.

+ 1 CC TO Mr.S.MANO HAR, ADVOCATE IN SR No. 46670
+ 1 CC TO Mr.D.S.HAROON RASHEED, ADVOCATE IN SR No. 46212

PJL

TE/SS-2 : 13/10/2016 : 3P/4C

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