

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.11.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.101 of 2014
& M.P.No.1 of 2014

1.K.Perumayee
2.R.Jayalakshmi
3.K.Saravanan

.. Petitioners

Vs.

Nataraja Finance, Namakkal
Rep. by its Managing Partner
Tiruchengode Road
Namakkal.

.. Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 11.12.2013 made in I.A.No.935 of 2013 in O.S.No.14 of 2010 on the file of the Additional District Munsif Court, Namakkal.

For Petitioners : Mr.T.Dhanyakumar

For Respondent : Mr.S.Balasubramanian

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 11.12.2013 made in I.A.No.935 of 2013 in O.S.No.14 of 2010 on the file of the Additional District Munsif Court, Namakkal.

2. The petitioners are the plaintiffs 2 to 4 and respondent is the defendant in O.S.No.14 of 2010 on the file of the Additional District Munsif Court, Namakkal. Originally, one Karuppannan filed the above suit for declaration that the respondent has no right over the suit property and for injunction restraining the respondent from encumbering the suit property. After the death of the first plaintiff Karuppannan, the first petitioner, who is the wife and petitioners 2 and 3, who are the daughter and son of the first plaintiff respectively, were brought on record as his legal heirs vide order dated 12.07.2011 made in I.A.No.570 of 2011. The respondent filed written statement on 03.06.2010 and is contesting the suit. The petitioners filed I.A.No.935 of 2013 on 02.09.2013 for amendment of the plaint.

3. According to the petitioners, it was advised that certain

minor defects exist in the pleadings and the same have to be rectified by filing the application for amendment as per the details shown in the petition filed in support of the above application.

4. The respondent filed counter affidavit and submitted that if amendment is allowed, it will alter the case and material alteration cannot be done.

5. The learned Judge, considering all the averments made in the affidavit, counter affidavit and judgment of the Apex Court, dismissed the application holding that the relief now sought for is barred by limitation.

6. Against the said order of dismissal dated 11.12.2013 made in I.A.No.935 of 2013, the present Civil Revision Petition is filed by the petitioners.

7. Heard the learned counsel for the petitioners as well as the respondent and perused the materials available on record.

8. The learned counsel for the petitioners contended that in

the judgment dated 16.09.2003 made in O.S.No.114 of 2000 filed by the petitioners, it was held that the petitioners are in possession and enjoyment of the suit property, power of attorney was not executed voluntarily and it is held to be invalid. The said decree is confirmed in A.S.No.295 of 2003. Based on the said judgment and decree only, the present suit is filed and amendment now sought for by the petitioners will not alter the character of the suit and introduce a new case. The amendment sought for is only pre-trial amendment. These contentions are without any merits.

9. In the plaint, the first plaintiff mentioned that he came to know about the sale deed on 02.01.2010. He filed suit on 04.01.2010 for declaration that the respondent has no right over the suit property. He did not seek any relief to set aside the sale deed dated 09.12.1999 or seek any declaration that the said sale deed is null and void. The petitioners have filed the present application for amendment on 02.09.2013. After three years of knowledge about the sale deed dated 09.12.1999, the claim now put forth by the petitioners is barred by limitation and the petitioners cannot institute a fresh suit for the relief stated supra by way of amendment. The petitioners have not given any reason for

not seeking any relief in the present suit earlier.

10. The learned Judge considering these facts dismissed the application by giving cogent and valid reason. There is no illegality or irregularity warranting interference by this Court with the order of the learned trial Judge, dated 11.12.2013.

11. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

14.11.2017

Index : Yes/No

kj

To

The Additional District Munsif,
Namakkal.

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V.M.VELUMANI, J.

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