

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CRP No. 3734 of 2017

and CMP.No.17370 of 2017

M.Maruthamuthu

.. Petitioner

Vs

R. Lakshmi Ammal (Died)

1. R.Sivamani

2. R.Jaganathan

3. A.Ayyasamy

4. S.Ravichandran

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 03.07.2017 passed in I.A.No.310 of 2016 in O.S. No.482 of 2007 on the file of the District Munsif Court, Tirupur.

For Petitioner : Mr. Govi Ganesan

O R D E R

This Civil Revision Petition has been filed by the petitioner seeking to quash the fair and decreetal order dated 03.07.2017 passed in I.A.No.310 of 2016 in O.S. No.482 of 2007 on the file of the District Munsiff Court, Tirupur.

2. According to the Revision Petitioner/second defendant, the respondents/plaintiffs have filed the suit in O.S. No.482 of 2007 for declaration of title to the property and recovery of possession and damages. Subsequently, the respondents/plaintiffs have filed an application seeking permission of the Court to amend the plaint to declare the sale deed dated 05.07.1974 and the subsequent sale deeds as null and void. The Revision Petitioner has filed the counter statement in the aforesaid application by stating that the said prayer for amendment of the suit is barred by limitation. By considering the contention of both the parties, the trial Court has allowed the application by holding that the plea of limitation can be decided only at the stage of trial. Challenging the aforesaid order, the petitioner has preferred this Civil Revision Petition before this Court.

3. The learned counsel for the petitioner has relied on a decision of the Hon'ble Supreme Court reported in 2002 (4) CTC 189 Sampath Kumar and Ayyakannu and another wherein in paragraph 10 and 11 of the Judgment, it has been held that permitting an amendment relates back to the filing of the

application and not from the date of the suit. Therefore, the order of the trial Court has to be modified in the light of the above said decisions.

4. The learned counsel for the petitioner has also submitted that the trial Court has allowed the application, liberty has been granted to the petitioner, by holding, the point of limitation shall be decided at the time of final disposal. Therefore it is clear from the order passed by the trial Court that the petitioner can agitate his contention at the time of trial of the suit. It is left open to the Revision Petitioner to place the judgment before the trial court at the time of the trial in the suit. At this stage this Court cannot entertain the CRP, as no prima facie case has been made out. It is for the trial Court to frame necessary issues and to decide the point of limitation in accordance with law.

5. Accordingly, this Civil Revision Petition is dismissed. Consequently miscellaneous petition is also closed. No Costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

dpq

To
The District Munsif Court,
Tirupur.

+1 cc to Mr.K.Govi Ganesan Advocate sr 71950

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