

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.12.2017

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

C.R.P. (PD) No.3906 of 2017

Krishnamurthy ... Petitioner

Vs

Kannappa Mudaliyar .. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 13.01.2015 in I.A.No.764 of 2014 in O.S.No.438 of 2007 on the file of Additional District Munsif, Vellore.

For Petitioner : Mr.R.Rajarajan

For Respondent : Mr.J.Shanmugasundarababu

ORDER

This revision petition arises against the fair and decretal order dated 13.01.2015 in I.A.No.764 of 2014 in O.S.No.438 of 2007 on the file of Additional District Munsif, Vellore.

2. The learned counsel for the petitioner would submit that the respondent filed O.S. No. 438 of 2007, seeking for permanent injunction. Subsequently, he filed an Interlocutory Application in I.A. No. 764 of 2014 to amend the prayer, by including the plea of mandatory injunction in the aforesaid suit. The trial court allowed the application and hence the present revision petition has been filed by the defendant in the suit.

3. According to the petitioner, by allowing the said application, the respondent has now introduced a new plea and new cause of action. Further, the prayer for mandatory injunction is barred by limitation. Without considering the question of limitation, the court below has allowed the application and therefore the order passed by the court below is liable to be set aside.

4. Per contra, the learned counsel for the respondent would submit that the amendment of the prayer to include mandatory injunction is within the period of limitation and therefore there is no warrant to interfere with the orders of the court below.

5. Considered the submissions of the learned counsel for the parties and perused the material available on record.

6. The dispute raised in the revision petition, is allowing the I.A. No. 764 of 2014, to include the prayer of mandatory injunction, is beyond the limitation period. The aforesaid question of limitation can be agitated at the time of trial. According to the respondent, within the prescribed limitation period, the present application has been filed for mandatory injunction. In the light of the decision of the Hon'ble Supreme Court in *L.C. Hanumanthappa vs. H.B. Shivakumar*, reported in (2016) 1 SCC 332, the issue of limitation can be resolved. This Court would make it clear that the said application is liable to be allowed, as the period of limitation has to be calculated from the date of filing of the application. Therefore, the parties concerned can agitate the issue at the time of the trial in the suit.

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7. Therefore, in the light of the aforecited decision of the Hon'ble Supreme Court, the order passed by the trial court is modified to the above said extent. On instructions, the learned counsel for both

parties undertake to co-operate for early disposal of the suit. Since the suit is of the year 2007, the trial court is directed to dispose of the suit within a period of six months from the date of receipt of a copy of this order.

8. The Civil Revision Petition is partly allowed, to the above said extent. No order as to costs.

06.12.2017

Index : Yes/ No

Speaking order/ Non speaking order

avr

To

The Additional District Munsif,
Vellore.

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D. KRISHNAKUMAR J.,

avr



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