

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.08.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.4654 of 2011
& M.P.No.1 of 2011

M.Mohammed Eajaz Basha .. Petitioner

Vs.

1.V.Vinayaga Mudaliar

Arumugham Mudaliar(deceased)

2.A.Baskaran

3.A.Sankari

4.A.Sujatha

5.A.Saraswathi

6.A.Kanakammal

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order of dismissal dated 11.10.2011 made in I.A.No.475 of 2011 in O.S.No.909 of 2009 on the file of the learned District Munsif, Katpadi, Vellore District.

For Petitioner : Mr.P.Seshadri

For R1 : No appearance

For R2 to R6 : Mr.Manohar Gupta
for M.G.Gupta & Ravi

ORDER

This Civil Revision Petition has been filed against the order of dismissal dated 11.10.2011 made in I.A.No.475 of 2011 in O.S.No.909 of 2009 on the file of the learned District Munsif, Katpadi, Vellore District.

2. The petitioner is the plaintiff and respondents are the defendants in O.S.No.909 of 2009. The petitioner filed the said suit for permanent injunction restraining the respondents from interfering with his peaceful possession and enjoyment of the suit property. The respondents filed written statement on 25.06.2004, disputing the title of the petitioner and claimed that they are the absolute owner of the property.

3. The petitioner filed I.A.No.473 of 2011 for amendment of the plaint to include to the relief of declaration and consequential amendment. According to the petitioner, he has furnished the details as to how he got the suit properties.

4. The respondents have filed counter affidavit and submitted that the petitioner is introducing a new cause of action and new case.

5. The learned Judge, considering the averments made in the affidavit, counter affidavit and materials available on record, dismissed the application holding that the relief sought for by the petitioner is barred by limitation.

6. Against the order of dismissal dated 11.10.2011 made in I.A.No.475 of 2011, the present civil revision petition is filed by the petitioner.

7. Heard the learned counsel for the petitioner and respondents 2 to 6 and perused the materials available on record. Though notice has been served on the first respondent and his name was printed in the cause list, there is no representation for the first respondent either in person or through counsel.

8. The learned counsel appearing for the respondent submitted that the amendment cannot be allowed if it is not filed

within the period of limitation. In support of his contention, he relied on the judgment reported in "**2009 (1)-L.W.510 (South Konkan Distilleries & another Vs. Prabhakar Gajanan Naik & others).**"

9. From the materials available on record, it is seen that originally the petitioner filed suit for permanent injunction. The respondents disputed his title. The petitioner filed application for amendment to include the relief of declaration. It is well settled that when originally the suit is filed for permanent injunction and when the title of the plaintiff is disputed, the plaintiff can seek amendment of the plaint to include the relief of declaration. The said relief can be sought for even at the stage of second appeal. It is also well settled that the application for amendment in all the cases cannot be dismissed on the ground on limitation. The said question can be decided at the conclusion of the trial. The amendment sought for by the petitioner is pretrial amendment and the same has to be considered liberally. In the circumstance, the order of the learned Trial Judge is set aside and the civil revision petition is allowed.

10. In the result, this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

28.08.2017

Index : Yes/No

dm/gsa

To

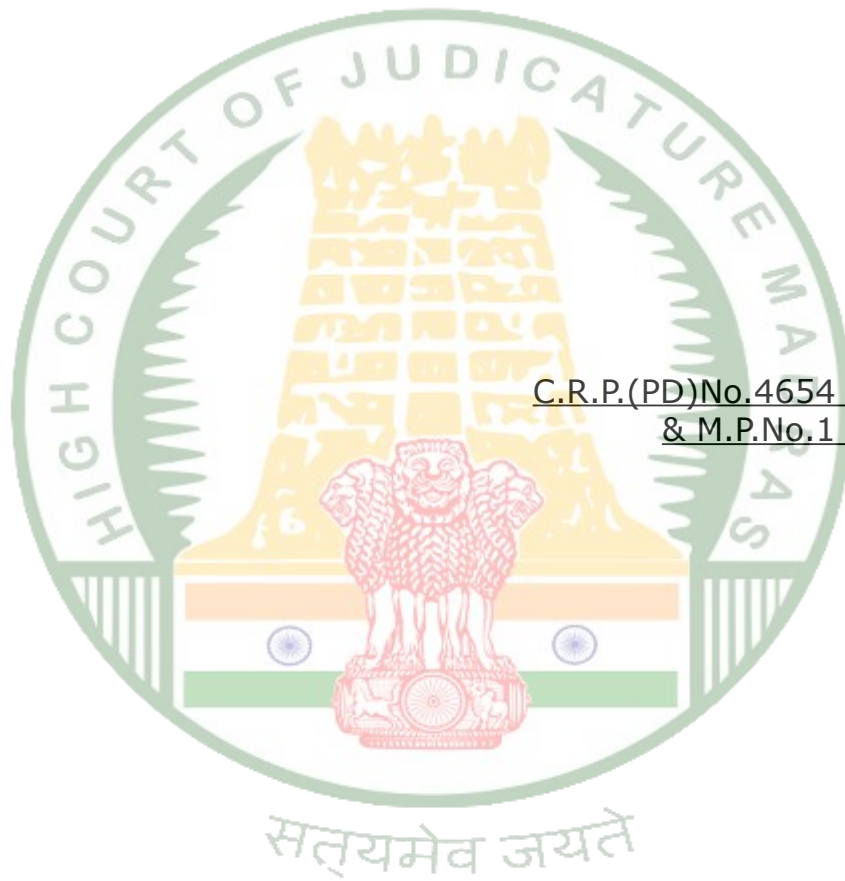
The District Munsif, Katpadi,
Vellore District.



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V.M.VELUMANI, J.

dm



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