

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.08.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.2828 of 2010
& M.P.No.1 of 2010

- 1.Ranganathan (Deceased)
- 2.Baby Ammal
- 3.Raja
- 4.Selvam
- 5.Vijay
- 6.Harikumar

.. Petitioners

Petitioners 2 to 6 brought on record
as Lrs' of the deceased sole petitioner
vide order of Court dated 13.04.2015
made in M.P.Nos.1 & 2 of 2013 in
C.R.P.No.2828 of 2010.

Vs.

- 1.Ganesan
- 2.Superintendent Electrical Engineer
Tamil nadu Electricity Board
Villupuram
- 3.Executive Engineer
Tamil nadu Electricity Board
Gingee
- 4.Junior Engineer
Tamil Nadu Electricity Board
Kuduvampoondi Village,
Gingee Taluk.

.. Respondents

PRAYER: Civil Revision Petition filed Under Article 227 of the
Constitution of India, against the fair and decretal order dated

15.07.2010, made in I.A.No.912 of 2010 in O.S.No.287 of 2004, on the file of the Subordinate Court, Gingee.

For Petitioners	: Mr.D.Ravichander
For R1	: No appearance
For R2 to R4	: Mr.V.Viswanathan

ORDER

This Civil Revision Petition is filed against the fair and decretal order dated 15.07.2010, made in I.A.No.912 of 2010 in O.S.No.287 of 2004, on the file of the Subordinate Court, Gingee.

2. Petitioners are legal heirs of one Ranganathan, the original plaintiff. The said Ranganathan initially filed the suit in O.S.No.287 of 2004, against the respondents for injunction restraining the respondents 2 to 4 from giving electricity connection to the first respondent. Pending suit, the electricity connection was given. The plaintiff filed an application in I.A.No.486 of 2009 for amendment of the prayer, claiming mandatory injunction, directing the respondents 2 to 4 to disconnect the electricity connection given to the first respondent. The said I.A. Was allowed on 14.09.2009. The first respondent filed written statement on 21.10.2009. Trial commenced. The parties let in evidence and closed their side. At

that stage, the plaintiff filed two applications in I.A.No.911 of 2010 to reopen the case and I.A.No.912 of 2010 for amendment of the plaint to include the prayer of declaration. According to the petitioner, the first respondent has denied the title of the plaintiff and in order to avoid multiplicity of proceedings and to decide the issue in the suit, amendment including the relief of declaration is necessary.

3. The first respondent filed counter affidavit and opposed the said application and submitted that the first respondent in the written statement filed on 21.10.2009 itself, denied the title of the plaintiff. The plaintiff did not take any steps immediately for amendment of the plaint till conclusion of the plaint.

4. The learned Judge, considering the fact that the first respondent has denied the title of the plaintiff in the written statement filed on 21.10.2009 itself and plaintiff has not taken any steps to amend the prayer at the earliest and the relief now sought for is barred by limitation, dismissed both the applications.

5. Against the said order dated 15.07.2010, made in I.A.No.912 of 2010 in O.S.No.287 of 2004, the present civil revision petition is filed by the petitioners 2 to 6.

6. Pending civil revision petition, the plaintiff died and petitioners 2 to 6 were impleaded as parties.

7. The learned counsel appearing for the petitioners submitted that amendment can be ordered at any stage of the proceedings and application must be considered liberally. The plaintiff has filed the application to include the prayer of declaration in order to avoid the multiplicity of proceedings and to decide the issue in the suit in its entirety. The learned Judge has erred in holding that the relief now sought for to include the prayer of declaration is barred by limitation as plaintiff has not filed application for amendment within a period of three months from the date of written statement. The learned Judge failed to see that the plaintiff is seeking relief of declaration with regard to immovable property.

8. Per contra, the learned counsel appearing for the respondents 2 to 4 submitted that the plaintiff was aware that his

title was disputed on 21.10.2009 itself, when the first respondent filed written statement. As per proviso to Order VI Rule 17, after commencement of trial, unless the party seeking amendment proves that in spite of due diligence he could not have filed amendment, the same cannot be ordered.

9. Heard the learned counsel appearing for the petitioners and respondents 2 to 4 and perused the materials available on record. Though the name of the learned counsel for the first respondent is printed in the cause list, there is no representation either in person or through counsel.

10. From the above facts, it is seen that the plaintiff had sought for an amendment to include the relief of declaration of the plaint, after commencement of trial and conclusion of evidence being let in by the parties. According to the plaintiff, the amendment now sought for to include the relief of declaration is necessary to decide the issue in the suit in order to avoid multiplicity of proceedings and to decide all the issues in entirety. The objection of the first respondent is that the application is belated one and plaintiff has not given any reason for amendment

after commencement of trial. As per the provisions of Order 6 Rule 17, there is restriction on the Court to allow the petition for amendment, after commencement of trial. But there is no total prohibition on the discretion of Court to allow amendment after commencement of trial. The amendment to include the relief of declaration in the suit originally filed for injunction can be granted even at the stage of second appeal in a given case. The Court has power to order amendment, if such amendment is necessary to properly decide the issue in the suit. The Court can also order amendment in the interest of justice and equity. An application for amendment to include any relief cannot be dismissed in all cases as barred by limitation. On the facts of particular case, the question of limitation can be relegated to the stage of appreciating evidence at the time of trial.

11. In the present case, the petitioner has sought for amendment of the plaint to include the relief of declaration at the stage of arguments. Considering all the above reasons, it is seen that the learned Judge has committed an irregularity in dismissing the application. The learned Judge also is not correct in holding that the relief of declaration is barred by limitation. The learned Judge

failed to see that the declaration sought for relates to right over the immovable property and period of limitation is 12 years. For the above reasons, the impugned order of the learned Judge is set aside and civil revision petition is allowed.

12. In the result, the I.A.No.912 of 2010 is set aside and the civil revision petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

11.08.2017

Index: Yes/No
gsa

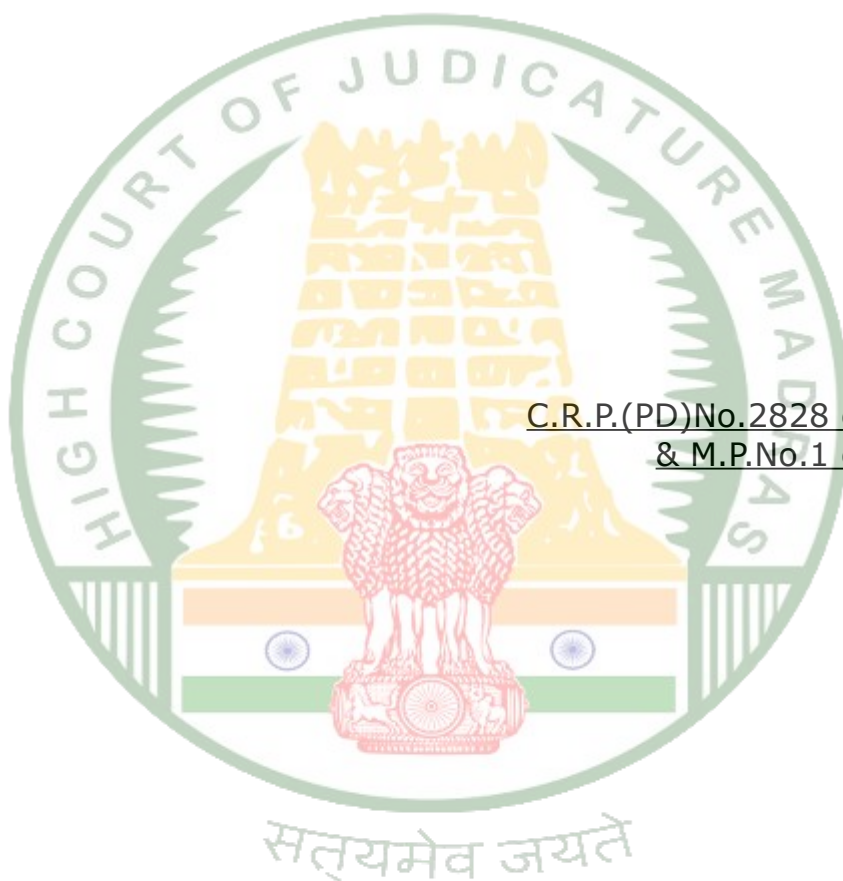
To

- 1.The Subordinate Court, Gingee
- 2.The Superintendent, Electrical Engineer
Tamil Nadu Electricity Board
Villupuram
3. The Executive Engineer
Tamil Nadu Electricity Board
Gingee
- 4.The Junior Engineer
Tamil Nadu Electricity Board
Kuduvampoondi Village,
Gingee Taluk.

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V.M.VELUMANI, J.

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