

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.11.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.2452 of 2013
& M.P.No.1 of 2013

1.D.Muthurangan
2.D.Raja
3.Devaraj

.. Petitioners

Vs.

Baby Ammal

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order on the file of the Additional District Munsif, Poonamallee, in I.A.No.891 of 2012 in O.S.No.643 of 2001 dated 14.03.2013 in allowing the application for amendment.

For Petitioners : Mr.V.Lakshminarayanan

For Respondent : Mr.M.Chidambaram

ORDER

This Civil Revision Petition has been filed against the fair and decretal order on the file of the Additional District Munsif,

Poonamallee, in I.A.No.891 of 2012 in O.S.No.643 of 2001 dated 14.03.2013 in allowing the application for amendment.

2. The petitioners are the defendants 2 to 4 and respondent is the plaintiff in O.S.No.643 of 2001 on the file of District Munsif Court, Poonamallee. The respondent filed the said suit for declaration and injunction against one Raniammal. The said Raniammal/first defendant died, subsequently the petitioners were impleaded as defendants 2 to 4. According to the respondent, the father of the respondent and first defendant Raniammal was the owner of 1 Acre 21 cents. Her father has settled 60 ½ cents on her and 60 ½ cents on the first defendant. From the date of settlement, they are in possession and enjoyment of the property by cultivating the same, that the suit properties are agricultural land and the respondent is cultivating the said property and paying the kist separately and first defendant is paying kist separately to the Revenue Department. The Adangal and the Chitta are in her name. The petitioners 1 and 2 who are the sons of first defendant tried to trespass into the suit property and they claimed to be the owner of the suit property. Hence, the respondent filed the suit for declaration and injunction. In the year 2008, the petitioners 1 and 2

trespassed into the suit property and dispossessed the respondent and let out the property to Larsen and Tubro Ltd., Manapakkam. The respondent issued notice to the Larsen and Tubro Ltd., Manapakkam not to put up any construction in the suit property and filed two applications for interim injunction and to amend the plaint. The said two applications were dismissed stating that the suit is for declaration of title and proposed party, who is alleged to be a tenant is not at all proper party for adjudication. The petitioners have filed written statement on 17.08.1999 and are contesting the suit.

3. Earlier, the petitioners have filed O.S.No.440 of 1999 on the file of Additional District Munsif Court, Poonamallee for permanent injunction against the respondent in respect of the suit property.

4. The respondent filed I.A.No.891 of 2012 for amendment of the plaint to include the relief of declaration that the respondent is the absolute owner of the suit property and direct the defendants to quit and deliver vacant possession of the suit property to the respondent and sought for deletion of existing prayer.

5. The respondent filed counter affidavit and opposed the said application and contended that the petitioners are in possession of the suit property, even before filing of the present suit. Earlier they filed O.S.No.440 of 1999 on the file of Additional District Munsif Court, Poonamallee for permanent injunction and in I.A.No.1500 of 1999 interim injunction was granted against the respondent. The respondent was never in possession of the suit property. She ought to have prayed for possession also at the time of filing of the suit. The suit is barred as per Order II Rule 2 CPC and prayed for dismissal of the said application.

6. Before the learned Judge, both the petitioners and respondent have not let in any oral evidence. The respondent marked eight documents as Exs.A1 to A8 and the petitioners marked 51 documents as Exs.B1 to B51.

7. The learned Judge considering the averments made in the affidavit, counter affidavit, plaint, written statement and materials available on record, allowed the application holding that the amendment sought for is not barred under Order II Rule 2 CPC, the

respondent is not introducing any new case and in order to avoid the multiplicity of proceedings, amendment is necessary.

8. Against the said order dated 14.03.2013 made in I.A.No.599 of 2012, the present civil revision petition is filed by the petitioners.

9. Heard the learned counsel for the petitioners and the learned counsel for the respondent and perused the materials available on record.

10. The learned counsel appearing for the petitioners reiterated the averments made in the counter affidavit filed in the above applications and grounds raised in the Civil Revision Petition and submitted that the earlier suit was filed by them in the year 1999 and obtained interim injunction. The respondent was never in possession of the suit property. Considering the facts that the petitioners are in possession of the suit property, interim injunction was granted in I.A.No.1500 of 1999. The present relief sought for by the respondent is time barred relief. In support of his contention, he relied on the following Judgments:

**1. [(2016)1 Supreme Court Cases 332]
L.C.Hanumanthappa (Since Dead) Represented by his Legal
Representatives -vs- H.B.Shivakumar.**

"28. In *Prithi Pal Singh v. Amrik Singh* 17, this Court was concerned with a suit claiming pre-emption under the Punjab Pre-emption Act, 1913. An amendment was sought to the plaint claiming that the plaintiff was entitled to relief as a co-sharer of the suit property. This Court after considering some of its earlier judgments held: (SCC p.583, para 11)

'11. In our opinion, there is no merit in the submissions of the learned counsel. A reading of the order passed by this Court shows that the application for amendment filed by Respondent 2 was allowed without any rider/condition. Therefore, it is reasonable to presume that this Court was of the view that the amendment in the plaint would relate this back to the date of filing the suit. That apart, the learned Single Judge has independently considered the issue of limitation and rightly concluded that the amended suit was not barred by time.'

29. Applying the law thus laid down by this Court to the facts of this case, two things become clear. First, in the original written statement itself dated 16.05.1990, the defendant had clearly put the plaintiff on notice that it had denied the plaintiff's title to the suit property. A reading of an isolated paragraph in the written statement, namely, Para 2 by the trial Court on the facts of this case has been correctly commented upon adversely by the High Court in the judgment under appeal. The original written statement read as a whole unmistakably indicates that the defendant had not accepted the plaintiff's title. Secondly, while allowing the amendment, the High Court in its earlier Judgment dated 28.03.2002 had expressly remanded the matter to the trial Court, allowing the defendant to raise the plea of limitation. There can be no doubt that on an application of *Khatri Hotels (P) Ltd.*, the right to sue for declaration of title first arose on the facts of the present case on 16.05.1990 when the original written statement clearly denied the plaintiff's title. By 16.05.1993 therefore a suit based on declaration of title would have become time-barred. It is clear that the doctrine of relation back would not apply to the

facts of this case for the reason that the Court which allowed the amendment expressly allowed it subject to the plea of limitation, indicating thereby that there are no special or extraordinary circumstances in the present case to warrant the doctrine of relation back applying so that a legal right that had accrued in favour of the defendant should be taken away. This being so, we find no infirmity in the impugned judgment of the High Court. The present appeal is accordingly dismissed."

2. [(2011)9 Supreme Court Cases 126] Khatri Hotels Private Limited and another -vs- Union of India and another.

"30. While enacting Article 58 of the 1963 Act, the legislature had designedly made a departure from the language of Article 120 of the 1908 Act. The word "first" has been used between the words "sue" and "accrued". This would mean that if a suit is based on multiple causes of action, the period of limitation will begin to run from the date when the right to sue first accrues. To put it differently, successive violation of the right will not give rise to fresh cause and the suit will be liable to be dismissed if it is beyond the period

of limitation counted from the day when the right to sue first accrued.”

11. The respondent filed suit for declaration of title and injunction. In the plaint, the respondent has alleged that she is the owner of the suit property as per the settlement deed executed by her father. She also alleged that her father had settled 50% each of 1 Acre 21 cents on the respondent and first defendant, who is her sister and mother of the petitioners. From the date of settlement, she is in possession and enjoyment of the suit property and when the petitioners tried to interfere with her possession, she filed the suit for declaration and injunction.

12. According to the respondent, subsequent to filing of the suit, the petitioners trespassed into the suit property and dispossessed the respondent. On the other hand, it is the case of the petitioners that the respondent was never in possession and she is not the owner of the suit property. According to the respondent, she is seeking amendment in view of the subsequent event of trespass by the petitioners after filing of the suit. The issue whether the petitioners were in possession of the suit property, when she

filed the suit or petitioners trespassed into the suit property after filing of the suit can be decided only after appreciating the evidence let in by the parties.

13. The learned Judge considered all the aspects in proper perspective and allowed the application in order to avoid multiplicity of proceedings. In view of the same, the Judgment relied on by the learned counsel appearing for the petitioners do not advance the case of the petitioners. In the circumstances, there is no illegality or irregularity warranting interference by this Court with the order of the learned trial Judge, dated 14.03.2013.

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

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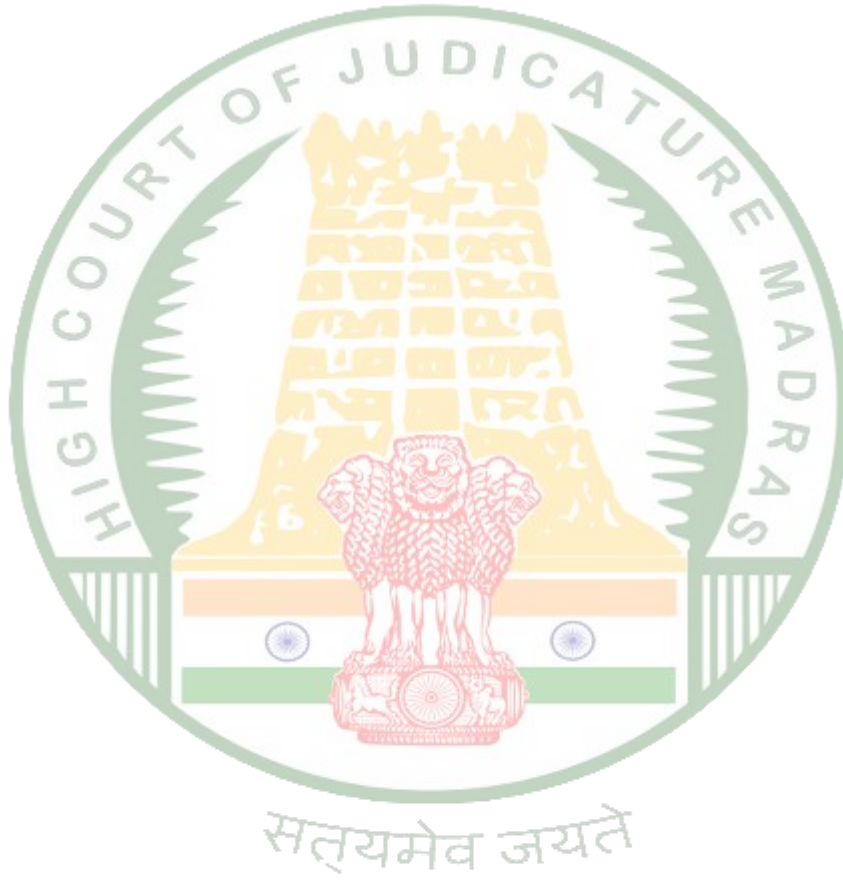
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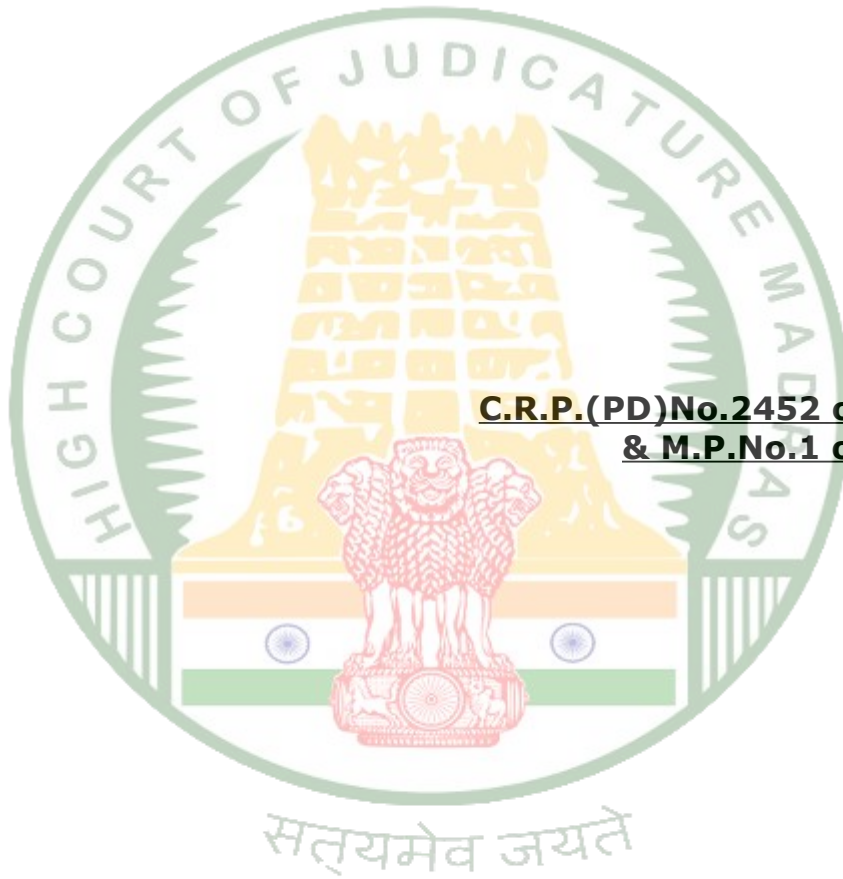
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