

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :: **4.4.2017**

DELIVERED ON : **28.04.2017**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

C.R.P.(P.D.) No.2484 of 2013

1.Manickavelu

2.Renganathan : Petitioners

versus

1.Arunchalam

2.Anbanathapuram Vagayara Dharmam,
rep. By its Trustees E.S.Ganapathy : Respondents

PRAYER: Revision filed against the order dated 26.2.2013, in I.A.No.306 of 2012 in O.S.No.139 of 2007 on the file of the Principal District Munsif, Mayiladuthurai.

For petitioners :: Mr.S.Sounthar

For respondents :: Mrs.R.Meenal, for R-1
R-2, given up

ORDER

The interlocutory application filed by the first respondent before the Principal District Munsif, Mayiladuthurai, under Order 6 Rule 17 CPC was allowed. Feeling aggrieved, respondents 1 and 2 in I.A.No.306 of 2012 in O.S.No.139 of 2007 are before this Court.

2. The learned counsel for the petitioners contended that the first respondent failed to satisfy that in spite of due diligence, he could not file

the application for amendment earlier. According to the learned counsel, without there being a factual finding with regard to due diligence, the Trial Court was not correct in allowing the amendment.

3. I have also heard the learned counsel for the first respondent.

4. The first respondent filed the suit for injunction against the petitioners before the Principal District Munsif, Mayiladuthurai, in O.S.No.139 of 2007. The first respondent claimed that he has been in exclusive possession and enjoyment of the suit property. The petitioners contested the suit. The Trial Court appointed an Advocate Commissioner to inspect the property. The Advocate Commissioner appears to have indicated in his report dated 2 September 2010 with regard to the residence of the petitioners and the development of the property. The first respondent, after the matter was posted for cross examination of D.W.1, filed an application for amendment of the plaint, seeking recovery of possession of a portion of the property. The petitioner opposed the application on the ground of commencement of trial. The Trial Court notwithstanding the said objection, allowed the application.

5. There is no dispute that the suit originally filed was a simple suit for injunction. It was only subsequently, the first respondent filed an application for amendment. It is true that the application was filed only after

posting the matter for cross examination of D.W.1.

6. The amendment application was filed to take up the plea of recovery of possession. There was no contention at the instance of the petitioner that as on the date on which amendment application was filed, the suit was barred by limitation. Even a question of limitation is essentially a question of fact and law.

7. After hearing the learned counsel for the parties, I am of the view that the learned Trial Judge was correct in exercising the discretionary jurisdiction. There is no question of re-appreciating the materials considered by the learned Trial Judge for the purpose of taking a different view in the matter. I am therefore of the view that the petitioner has not made out a case for exercising the revisional jurisdiction.

8. In the upshot, I dismiss the civil revision petition. No costs. Consequently, M.P.No.1 of 2013 is also dismissed.

28.04.2017

Index:Yes/no
tar

To

The Principal District Munsif Court, Mayiladuthurai.

K.K.SASIDHARAN, J.

(tar)

P.D. Order in
C.R.P.(P.D.) No.2484 of 2013

28.04.2017