

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.11.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.2529 of 2013
& M.P.No.1 of 2013

1.Periyasamy
2.Sangeetha
3.Priyadharshini
4.Leelavathy

.. Petitioners

Vs.

1.Chellammal
2.Chinnaponnu
3.Karuppukodi
4.Arukkani
5.Ganapathy

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order and decretal order dated 21.02.2013 made in I.A.No.896 of 2012 in O.S.No.237 of 2007 on the file of the Principal District Munsif Court, Namakkal.

For Petitioners : Mr.P.Jagadeesan

For R1 to R5 : No Appearance

ORDER

This Civil Revision Petition is filed against the order and decretal order dated 21.02.2013 made in I.A.No.896 of 2012 in O.S.No.237 of 2007 on the file of the Principal District Munsif Court, Namakkal.

2. The petitioners are the plaintiffs and respondents are the defendants in O.S.No.237 of 2007 on the file of the Principal District Munsif Court, Namakkal. The petitioners filed the said suit against the respondents, for permanent injunction. The respondents 1 to 4 filed written statement on 25.07.2007, 5th respondent filed written statement on 11.09.2007 and are contesting the suit. The petitioners filed I.A.No.896 of 2012 for amendment to include the prayer of declaration of title of the plaintiff. According to the petitioners, the respondents denied the title of the petitioners and they have taken a stand that without seeking declaration of title, suit for injunction is not maintainable. In view of such stand, the petitioners have filed the present application for amendment to include the relief of declaration.

3. The respondent filed counter affidavit and submitted that the petitioners are not entitled to relief of declaration and if amendment is allowed, the entire character of the suit will be changed.

4. The learned Judge, considering the averments in the affidavit, counter affidavit and materials on record, dismissed the application on the ground that the relief sought for by the petitioners is barred by limitation.

5. Against the order of dismissal dated 21.02.2013 made in I.A.No.896 of 2012 in O.S.No.237 of 2007, the present Civil Revision Petition is filed by the petitioners.

6. Heard the learned counsel appearing for the petitioners. Though notice is served on the respondents and their names are printed in the cause list, there is no representation either in person or through counsel.

7. The petitioners have filed suit for permanent injunction and they have stated in the plaint that the suit property is

their ancestral property and they are the owner of the suit property. The respondents have denied the title and stated that without seeking declaration of title, suit for injunction is not maintainable. In view of the denial of title by the respondents, the petitioners have rightly sought for amendment to include the relief of declaration. Such an amendment will not change the character of the suit as the petitioners have made averments in the plaint stating that the suit property is their ancestral property and they are the owners. The application for amendment is a pre-trial amendment and same has to be liberally considered. The application for amendment before trial commences can be dismissed only when it affects rights already accrued to other side or causes prejudice to the other side which cannot be permitted. It is now well settled that question of limitation is a mixed question of fact and law and the same can be decided only by appreciating the evidence let in by the parties. It is also well settled that all the applications for amendment cannot be dismissed on the ground of limitation. The said issue can be left open to be decided at the conclusion of trial. In view of the relevant averments made by the petitioners in the plaint, with regard to their ownership, the amendment to include the relief of the declaration will not change the character of the suit. For the above reasoning,

the learned Judge committed an irregularity in not considering the above facts. In these circumstances, the order passed in I.A.No.896 of 2012 is liable to be set aside and is hereby set aside.

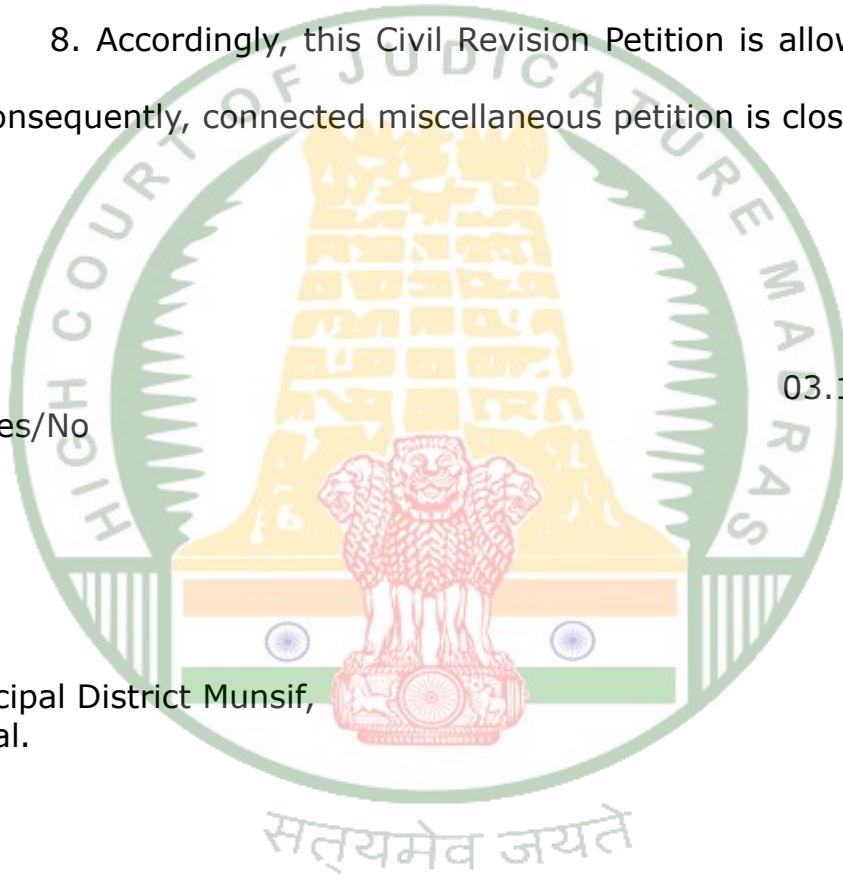
8. Accordingly, this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

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Index: Yes/No
gsa

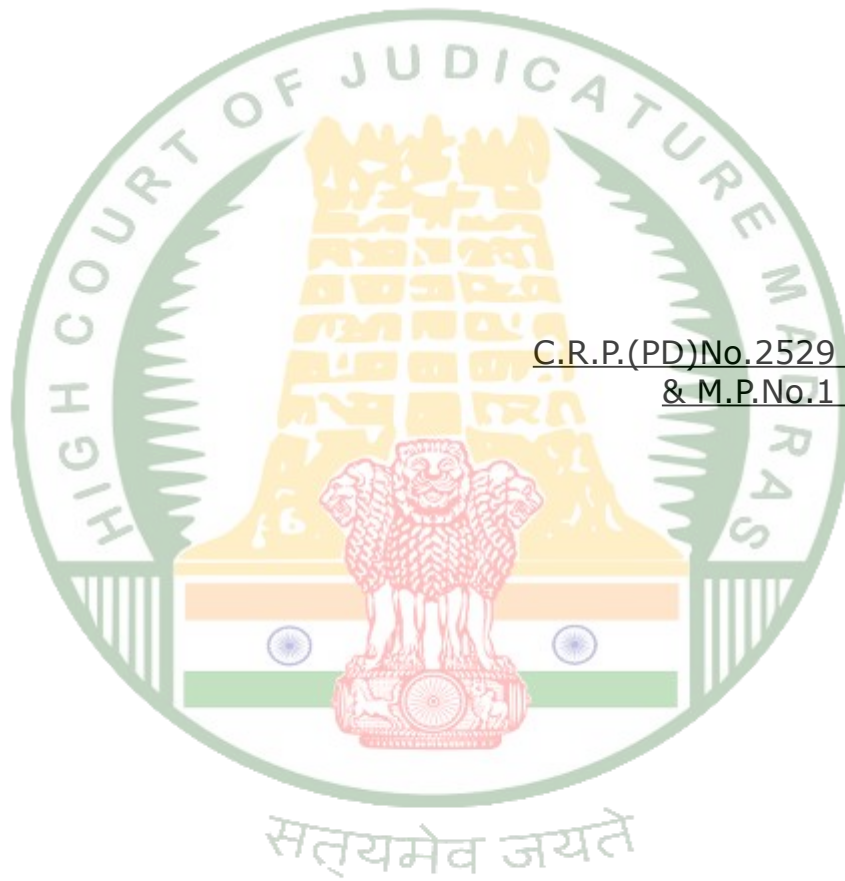
To

The Principal District Munsif,
Namakkal.



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V.M.VELUMANI,J.
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