



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:06.04.2017

CORAM:

WEB COPY

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.R.P (MD) No. 674 of 2017

and

C.M.P (MD) No. 3009 of 2017

Dhanathammal (Died)

- 1.Kalyani
- 2.Gandhimathi
- 3.Manickam
- 4.Srinivasan
- 5.Gajalakshmi

...Petitioners/Petitioners/Plaintiffs

-Vs-

Venkatesan

...Respondent/Respondent/Defendant

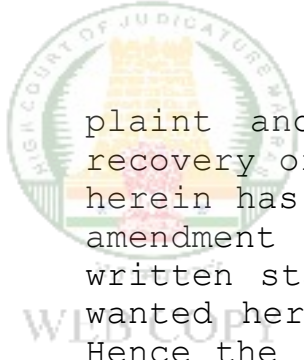
Prayer: This Civil Revision Petition is filed by Under Article 227 of Constitution of India, praying to set aside the Fair and Decretal order passed in I.A.No.460 of 2016 in O.S.No.1802 of 2009 on the file of the Principal District Munsif, Trichirapalli dated 16.11.2016.

For Petitioner	: Mr.D.Kanagasabai
For Respondent	: Mr.P.Arun Jayatram

ORDER

This Civil Revision Petition has been filed by Under Article 227 of Constitution of India, praying to set aside the Fair and Decretal order passed in I.A.No.460 of 2016 in O.S.No.1802 of 2009 on the file of the Principal District Munsif, Trichirapalli dated 16.11.2016.

2. This suit in O.S.No.1802 of 2009 was filed for bare injunction by the mother of the fourth petitioner herein against one of her son, in respect of the property which stands in the name of the respondent/defendant. The defendant has filed a written statement stating that he is the title holder of the property and he claims ownership of the property. Therefore the suit for bare injunction is not maintainable. The written statement in the suit was filed on 07.12.2010, when the plaintiff/mother was alive. After her death, now legal heirs of the plaintiff have been brought on record. They filed an Interlocutory application seeking to carry out amendment of the prayer in the



plaint and relief by including the relief of declaration and recovery of possession in respect of title for which the defendant herein has filed a counter stating that by virtue of filing of the amendment petition that too belatedly long after filing the written statement, would go to show that the revision petitioners wanted herein to introduce a new case with new cause of action. Hence the Interlocutory Application should be dismissed. The court below has accepted the contention of the defendant and dismissed the application.

3. Aggrieved by that the present revision petition has been filed on the ground that it is not a new case introduced by the plaintiffs and the defendant is in no way going to prejudice if such an amendment is allowed to be carried out. The plaintiffs have filed the present application before commencing of the trial and therefore, there is no impediment to consider the amendment petition and allow the same. However, the court below has erroneously dismissed the application, by observing that the said amendment will give rise to a new right to the party which they ought to have bestowed at the time of institution.

4. It is also pointed out by the learned counsel appearing for the revision petitioners that the defendant was not in possession of the property on the date of filing of the suit and there is no wrong in allowing the application to amend the plaint by including the relief of declaration and recovery of possession.

5. In support of his submission the learned counsel appearing for the petitioner has relied upon the judgment reported in 2005-4-L.W.193 (Chinna Pillai Udayar v. Natesa Udayar & another) in this case, Court has entertained the amendment petition filed after 11 years after the institution of the suit holding that the amendment sought for is only in sequel to the written statement, therefore the impugned order declining amendment causes serious prejudice to the plaintiff, had set aside the impugned order.

6. The other judgment relied upon by the learned counsel for the revision petitioners is reported in 2016 (2) TLNJ 383 (Civil) (G.K.Parthasarathy Vs. K.Gopal & another) in this case, earlier the suit for bare injunction was filed and later, when the plaintiff was dispossessed, pending suit, application to amend the plaint was filed. In the said circumstances, Court has held that there is limitation for recovery of possession under Article 64 of limitation Act. Therefore the application for amending the suit for recovery of possession ought to have been within a period of 12 years from the date of dispossession.

7. The third judgment relied upon by the learned counsel for the revision petitioners is the one reported in 2013-1-L.W.213 (Abdul Rehman & Anr.v.Mohd.Ruldu & others) In this case amendment petition was filed in a bare injunction suit to include the relief

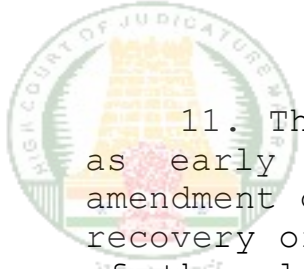
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of declaration of title and for setting aside the sale deeds.

8. The Hon'ble Supreme Court in this case has held that under the proposed amendment, if it is to include the relief of declaration of title, in addition to the permanent injunction to protect their interest and not to change the basic nature of the suit alleged, such plea is permissible. The facts of the above cited case is that in a suit for permanent prohibitory injunction filed against the defendant, all facts relevant for the relief sought under the proposed amendment has already been set out and pleaded in the pre-amended plaint, but omitted to make a specific plea of relief of declaration of title and setting aside of sale deed. Since the relief sought under the proposed amendment had already been set out in the pre-amended plaint, the relief of cancellation of sale deeds as sought by amendment does not change the nature of the suit as alleged and therefore, the Supreme Court held that the relief sought by way of amendment by the appellants could also be claimed by them by way of a separate suit on the date of filing of the application. Hence the reliefs claimed are not barred in law and No prejudice would be caused to respondent Nos.1-3 if the amendments were allowed and it would in fact avoid multicurrency of litigation.

9. This Court totally concurs the proposition of law laid down in the 3 cases cited Supra. The facts of the present case is that the mother has filed the suit against her son. The plaintiff admits that the title to the suit property stands in the name of the defendant. The specific contention is that the sale deed was executed in favour of her son Venkatesan, but she is the owner of the suit property and she is in possession of the suit property even though the sale deed stands in the name of the defendant. Having pleaded so, the relief of declaration regarding title as well as the pleadings questioning the title of the defendant ought to have been raised at the first instance. At least, the plaintiff ought to have taken the present amendment immediately after the filing of written statement by the defendant on 07.01.2007, for reason best known, the said step was not taken by the plaintiff. Only after the demise of the original plaintiff, her legal representatives have come out with this amendment application belatedly. Since, there is no specific pleading regarding the validity of the title and possession in favour of the defendant. New case cannot be allowed after seven years by way of amendment.

10. According to plaintiff, the property was purchased in the name of the defendant. But she is in possession and enjoyment of the suit property. She has leased out portions of the suit property to various tenants and collecting rent from them. It is also the specific case of the plaintiff that on the date of the sale deed, the name of the defendant, he was very young boy 20 years old.



11. These averments were specifically denied by the defendant as early as on 07.01.2010. The present application for the amendment of the plaint by including the relief of declaration and recovery of possession has been filed by the legal representatives of the plaintiff, after six years from the date of filing the written statement by the defendants. The request for amending the plaint has been rejected by the trial Court since, it has been sought after a long delay and the proposed amendment seeking for the relief of declaration and recovery of possession is barred by limitation. Further the present application was not taken out by the original plaintiff. After the death of the original plaintiff, her legal heir has filed the petition after a lapse of 6 years. The plaint and the written statement both pertain to the possession of the property as well as the title. However, the suit was originally filed only for the relief of injunction. The said omission is now sought to be rectified by way of amendment. This said amendment per se cannot be allowed. Since the declaration of title without challenging the title deed, which now admittedly stands in the name of defendant.

12. A person, who pursue the suit has to be more vigilant enough to seek all the reliefs at one stretch and if there is some omission ought to have taken steps immediately for rectification, if there is genuine cause. In the case in hand, there is no just cause to include a relief beyond limitation and without substantial pleadings by way of amendment after lapse of several years.

13. Therefore, this court is not inclined to interfere with the order of the trial court. Hence, this revision petition is dismissed. Consequently Connected Miscellaneous Petition is closed. No Costs.

Sd/-

Assistant Registrar()

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Sub Assistant Registrar

das/sm

TO: THE PRINCIPAL DISTRICT MUNSIF,
TIRUCHIRAPPALLI

1CC TO MR. D. KANAGASABAI, ADVOCATE SR: 50845

SDS RR

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