

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2018

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.R.P.(PD).No.1857 of 2013

V.K.Lakshmi

...Petitioner

Vs.

1. C.R.Sivanandam
2. C.R.Shankar
3. C.R.Kannan
4. C.R.Jothi

...Respondents

Prayer: Civil Revision Petition filed under Article 227 Constitution of India to allow this Civil Revision Petition by setting aside the Fair and Decreetal Order dated 13.03.2013 made in I.A.No.1565 of 2012 in O.S.No.12040 of 2010 on the file of IV Additional City Civil Court, Chennai.

For Petitioner : Mr.N.Premkumar

For Respondents : R1 - Died
R2 & R3 - Notice not served
R4 - Exparte EB

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ORDER

The instant civil revision petition has been filed challenging the order dated 13.03.2013 passed by the learned IV Additional City Civil Judge, Chennai, in I.A.No.1565 of 2012 in O.S.No.12040 of 2010.

Brief facts leading to the filing of the instant revision:

2. The Petitioner is the first defendant in the suit O.S.No.12040 of 2010 pending on the file of IV Additional City Civil Court Judge, Chennai. The respondents 1 to 3 are the plaintiffs in the suit and the fourth respondent is the fourth defendant in the suit. The respondent Nos.1 to 3 have filed the suit in O.S.No.12040 of 2010 seeking for a declaration and injunction that they are absolute owners of the suit schedule property. The written statement was also filed by the Petitioner, who is the first defendant in the suit. Apart from raising various other defences, in the written statement they have raised a specific plea that the suit O.S.No.12040 of 2010 is barred by the law of limitation. The trial court framed issues, but according to the petitioner the issue regarding limitation was not one of the issues framed by the Court. I.A.No.1565 of 2012 was filed by the petitioner for recasting the issues by incorporating the following issues :

- a) Is not the suit is clearly barred under the law of limitation
- b) Is not Tmt.V.K.Thilakam a proper and necessary party to the suit in terms of absolute ownership of possession and enjoyment at present over the suit schedule property.

A counter was also filed by the respondent Nos.1 to 3, who are

plaintiffs in the suit. After filing of I.A.No. 1565 of 2012 for recasting of issues, respondent Nos.1 to 3, who are plaintiffs in the suit, had filed an interlocutory application in I.A.No.5893 of 2012 seeking to implead V.R.Kushaldoss and V.K.Thilagam as 4th and 5th defendants in the suit. A counter was also filed by the petitioner in I.A.No.5893 of 2012 filed by the respondent Nos.1 to 3, who are plaintiffs in the suit. A common order dated 13.03.2013 was passed by the trial Court in I.A.No.1565 of 2012 and I.A.No.5893 of 2012 in O.S.No.12040 of 2010, dismissing I.A.No.1565 of 2012 filed by the petitioner seeking for recasting the issues on the ground that the application has been filed pre-maturely, but the trial court has allowed I.A.No.5813 of 2012 filed by the respondent Nos.1 to 3/plaintiffs, seeking to implead V.R.Kusahaldoss and V.K.Thilagam as 4th and 5th defendants in the suit.

3 Aggrieved by the dismissal of I.A.1565 of 2012 in O.S.No.12040 of 2010, filed to recast the issues, the petitioner, who is the first defendant in the suit has preferred the instant revision.

Submissions of the learned counsels:

4 According to learned counsel for the petitioner despite making a specific plea in paragraph no.13 of the written statement that the suit is barred by the law of limitation, the trial Court had failed to frame an issue with regard to limitation. He drew attention of this Court to paragraph no.13 of the written statement filed by the petitioner before the trial Court. According to her the respondent nos.1 to 3 had earlier filed a suit against the petitioner in O.S.No.4964 of 1990 for the same relief. According to her in that suit an application under Order VII Rule 11 of C.P.C. was filed by the petitioner seeking for rejection of plaint in O.S.No.4964 of 1990. The trial Court, in the earlier suit, dismissed the said application filed by the petitioner under Order VII Rule 11 of CPC, against which a revision was filed before this Court in C.R.P.No.3722 of 2000. The learned counsel for the petitioner drew the attention of this Court to the order dated 25.02.2002 passed by this court in C.R.P.No.3722 of 2000 filed by the petitioner and submitted that this Court allowed the Civil Revision Petition by setting aside the order of the Court below in I.A.No.3908 of 1998 in O.S.4964 of 1990 giving liberty to the respondent Nos.1 to 3, who are plaintiffs in the present suit, to file a fresh suit by giving sufficient opportunity for the parties to raise questions on both facts and law including the point of limitation. After passing of the order dated 25.02.2002 by this Court in C.R.P.No.3722

of 2000 in respect of the previous suit, the respondent Nos.1 to 3 filed a fresh suit against the petitioner seeking for the same relief of declaration as sought for in the earlier suit.

5 According to the learned counsel for the petitioner, this court by its final order dated 25.02.2002 in CRP.No.3722 of 2000 has permitted the petitioner to raise all defences in the fresh suit including the defence of limitation. Despite taking a specific plea in the suit in O.S.No.12040 of 2010 that the suit filed by the respondent nos.1 to 3/plaintiffs is barred by the law of limitation, the trial Court has erroneously not framed an issue in that regard, which constrained the petitioner to file an application before the trial Court for recasting the issues which includes the issue of limitation.

Discussion:

6 This Court has perused and examined the impugned order passed in I.A.No.1565 of 2012 filed by the petitioner for recasting issues. Even though the petitioner has sought for two issues to be recasted, the learned Counsel for the petitioner has submitted that it is sufficient, if the trial Court recasts only the limitation issue as the other issue has now

become redundant, since V.R.Kushaldoss and V.K.Thilagam have already been impleaded by order passed in I.A.No.5893 of 2012 filed by the respondent Nos.1 to 3. As seen from the impugned order, the trial court has rejected I.A.No.1565 of 2012 filed by the petitioner for recasting of issues only on the ground that the application has been filed pre-maturely and issues can be recasted only after the newly added parties, as permitted by the Court in I.A.No.5893 of 2012, are provided with opportunities to file their written statement and thereafter only additional issues can be framed by the Court. The relevant finding of the trial court is extracted hereunder:

“After adding them as parties in the suit, this court has to be given sufficient opportunities to the newly added parties in the suit by placing them by filing written statement and that the issues have to be framed accordingly. As such the petition in I.A.5893 of 2012 since allowed, the present petitioner/plaintiff for recasting the issues may not arise at this stage as I found that it is the pre-matured stage to frame the said issues as it is pointed in I.A.1565 of 2012. After entered appearance of the said newly added parties and after providing them opportunities to file the written statement and that the additional issues have to be framed by this court.”

7 Even though, the Petitioner has taken a specific plea in her written statement that the suit is barred by the law of limitation, the trial Court has not framed any issue in that regard. This court is of the considered view that the trial court has erroneously come to the conclusion

that the application filed by the petitioner is pre-mature and there was no necessity to frame the issue of limitation at that stage. Further having raised a specific plea in the written statement filed by the petitioner, the trial Court ought to have framed the issue of limitation along with other issues. Therefore the order of the trial Court dismissing I.A.No.1565 of 2012 in O.S.No.12040 of 2010 is erroneous and will have to be set aside.

Conclusion:

8 In the result, the order dated 13.03.2013 dismissing the application I.A.No.1565 of 2012 filed by the petitioner is set aside and the civil revision petition is allowed and the trial court is directed to frame the issue of limitation as sought for in prayer in I.A.No.1565 of 2012 in O.S.12040 of 2010 filed by the petitioner. The trial Court is directed to dispose of the suit within a period of three months from the date of receipt of a copy of this order.

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Index: Yes / No

Internet: Yes / No

Speaking order / Non Speaking order

prm/cgi

ABDUL QUDDHOSE,J.,

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To

The IV Additional City Civil Court, Chennai.

Copy to:

The Record Clerk, VR Section, High Court, Madras.



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