

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2018

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP(PD).No.3853 of 2017

and

CMP.No.17985 of 2017

1.S.Mahesh Raja Singh
2.S.Bakkiam

.. Petitioners

Vs.

1.K.Saraswathy
2.S.Muniyandi Thevar
3.M.Rajalingam
4.The Manager,
Citi Bank, Club House Road,
Anna Salai, Chennai - 600 002.

.. Respondents

PRAYER : Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 02.02.2017 in I.A.No.606 of 2015 in O.S.No.11 of 2009, pending on the file of the Sub-Court, Tambaram.

For Petitioners : Mr.T.Easwaradhas

For Respondents : Mr.Balan Haridas for R1
No appearance for R2 to R4

ORDER

The respondent has filed the suit in OS.No.11 of 2009, [Originally the respondent has filed a suit in OS.No.166 of 2004]. The suit is for declaration of the title of the suit property, for permanent injunction and also for damages.

2. In the aforesaid suit the written statement has been filed by the defendants on 11.01.2005 and thereafter, an additional written statement was filed on 02.04.2007 and the suit was posted for trial. The plaintiff/ 1st respondent herein has filed a proof affidavit on 05.03.2010. Subsequently, an application in IA.No.606 of 2015 has been filed by the respondent seeking to amend the prayer in the suit and insert the following prayer along with the earlier prayers:

“Cancellation of the Power of Attorney dated 20.10.2003 registered as Document No.977 of 2003 on the file of SRO, Kodambakkam and Sale Deed dated 02.01.2004 registered as Document No.18 of 2004 on the file of SRO, Pallavaram.”

3. The petitioners herein have filed a counter statement for the aforesaid application by stating that the petitioner therein has filed the amendment application after 11 years of the filing of the suit. Therefore, the said application is barred by limitation.

4. By an order dated 02.02.2017, the said application in I.A.No.606 of 2015 was allowed by the learned Sub-Judge, Tambaram.

5. The learned counsel for the petitioners would submit that the petitioners/ defendants have objected for the amendment application filed by the 1st respondent/plaintiff on the ground that the said application is barred by limitation and there is no reason stated in the affidavit for the delay on the part of the 1st respondent/ plaintiff, as contemplated under Order VI Rule 17 of the Code of Civil Procedure.

6. The learned counsel for the petitioners would further submit that the trial has already been commenced, hence, allowing the said application would prejudice the right of the petitioners. Therefore, the order of the court below is liable to be set aside.

7. The learned counsel for the respondents would submit that the respondents have already filed an application to amend the prayer in the earlier suit which was filed in O.S.No.166 of 2004 and the respondents have filed the said suit with a prayer of declaration and permanent injunction. The present prayer as sought for in the application is only consequential to the declaration prayer already sought for by the respondents. Therefore, no

prejudice would be caused on the side of the petitioners if the said application is allowed. The learned counsel for the respondents would also further submit that, the petitioners can also raise all the objections at the time of the trial of the suit.

8. I have considered the aforesaid submissions made by the learned counsel for the petitioners and the respondents. It is an admitted fact that the respondents have filed an application in IA.No. 606 of 2015 on 12.05.2015, whereas, the suit which has been filed in OS.No.166 of 2004 is of the year of 2004 and subsequently, the same was renumbered as O.S.No.11 of 2009. From the above said facts, the application in I.A.No.606 of 2015 has been filed by the respondents nearly after 11 years.

9. It is useful to extract the decision of the Hon'ble Supreme Court in the case of ***L.C.Hanumanthappa Vs. H.B.Shivakumar*** reported in **2015 (6) CTC 562**, wherein it has been held as follows:

"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 16th May 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 Para 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 28th March 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 Private limited** (supra), the right to sue for declaration of title first arose on the facts of the present case on 16th May 1990 when the original Written Statement clearly denied the Plaintiff's title. By 16th May 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."

10. The Sale Deed which was sought to be cancelled in the prayer was admittedly executed in the year 2004 ie., on 02.01.2004 and the suit is filed in the year 2004. Therefore, in the light of the aforesaid decision of the Hon'ble Supreme Court in *L.C.Hanumanthappa Vs. H.B.Shivakumar* reported in **2015 (6) CTC 562**, the order of the Court below is liable to be set aside.

11. Therefore, there is not hesitation to set aside the impugned order passed by the trial Court, however, it is open to the respondents to proceed the suit on the basis of the prayer, as already sought for in the suit and the same shall be decided in accordance with law, without being influenced by the observations, made in this Civil Revision Petition.

12. In fine, the order dated 02.02.2017 made in I.A.No.606 of 2015 in O.S.No.11 of 2009 on the file of the Sub Court, Tambaram is set aside and this Civil Revision Petition is allowed. Consequently, the connected miscellaneous petition is closed. No costs.

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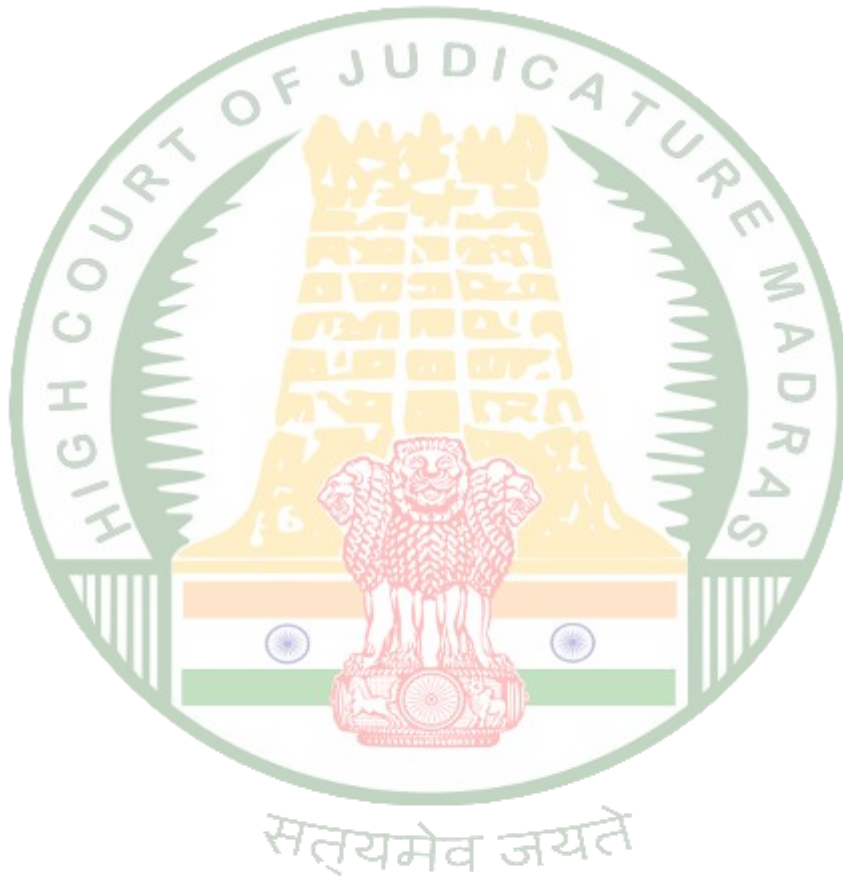
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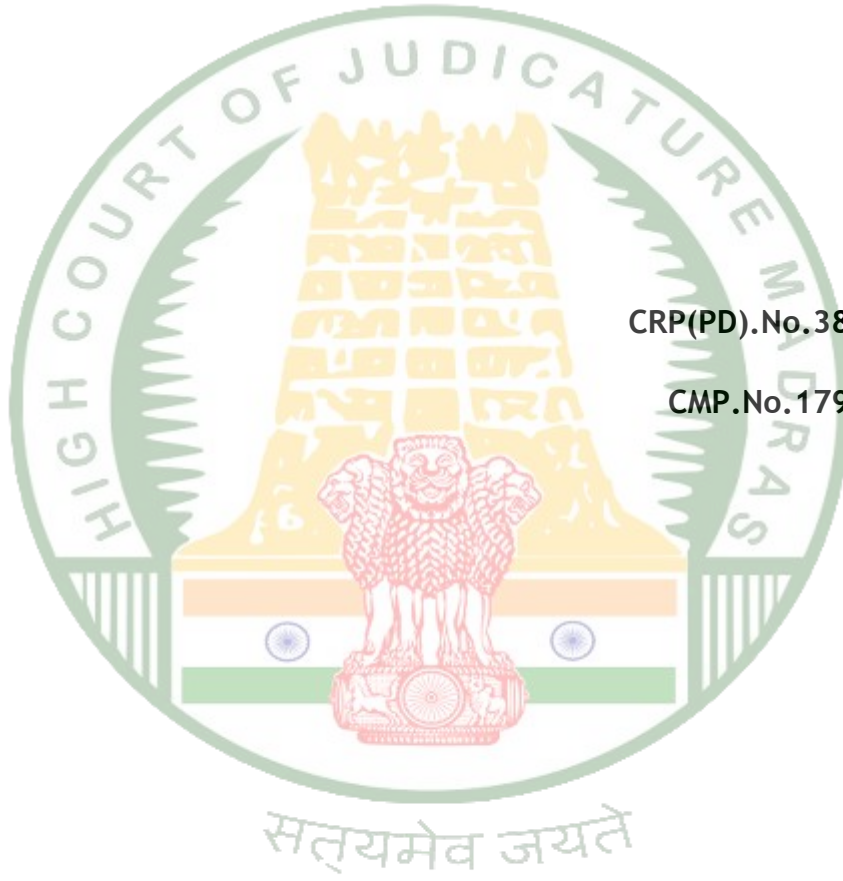
The Sub-Court,
Tambaram.



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D. KRISHNAKUMAR J.,

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