IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.2.2018

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THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.R.P.(PD) No.4794 of 2017 and C.M.P.No.22544 of 2017

Thangavel Gounder ... Petitioner/Plaintiff

Vs

1 The Assistant Commissioner,
Hindu Religious and Charitable Endowment,
Coimbatore.

2 Thakkar/Executive officer,
Arulmighu Varadha Perumal Temple,
Jotham Patti Village,
Madhathukulam Taluk,
Udumalpet.
At
Arulmighu Prasanna Vinayagar Thirukovil
Udumalpet. ... Respondents/Defendants

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This Civil Revision Petition is filed under Article 227 of the Constitution of India against the order, dated 09.11.2017 made in I.A.No.1281 of 2017 in O.S.No.479 of 2008 on the file of the District Munsif, Udumalpet.

For Petitioner : Mr.S.Gunalan

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O R D E R

The petitioner has filed a suit in O.S.No.479 of 2008 against the respondent for permanent injunction. The respondent has filed written statement in December, 2008. Thereafter, the suit was posted for trial and the plaintiff side witnesses were examined. At this stage, an application in I.A.No.1281 of 2017 has been filed to amend the plaint. The court below dismissed the said application. Therefore, the petitioner has preferred the present Civil revision petition before this Court.

2 According to the petitioner, the present application has been filed to include the prayer for declaration by way of amendment in the plaint. The court below misinterpreted and dismissed the said application on the ground that the petitioner has not filed the present application within the limitation period. According to the petitioner, whether the declaration prayer sought to be included by the petitioner is within the time or beyond the limitation period can be adjudicated only at the time of trial in the suit and no prejudice would be caused to the respondent if the said application is allowed. Therefore, the order passed by the court below is liable to be set aside.

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3 Heard the learned counsel for the petitioner and perused the materials on record.

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4 In **L.C. HANUMANTHAPPA VS. SHIVAKUMAR [2015(6) CTC 562]**

the Hon'ble Supreme court has held as under:

> *"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 plaintiffs 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 plaintiffs 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 plaintiffs 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*

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D.KRISHNAKUMAR, J.

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find no infirmity in the impugned judgment of the High Court. The present appeal is accordingly dismissed."

5 A perusal of record shows that the suit has been filed in the year 2008. Written statement was filed in December 2008. The petitioner has filed the present application in the year 2017. Therefore, the law laid down by the Hon'ble Supreme Court in the decision cited supra, squarely applies to the facts of the present case. In the light of the aforesaid decision, the application filed by the petitioner is barred by limitation. Therefore, there is no error or illegality in the impugned order passed by the court below. Thus, there is no warrant to interfere with the order passed by the court below.

Accordingly, the Civil revision petition is dismissed. No costs. Connected miscellaneous petition is closed.

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20**.02.2018**

Speaking/Non Speaking order
Index: Yes/No
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To
The District Munsif, Udumalpet

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and C.M.P.No.22544 of 2017

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