

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2018

CORAM:

THE HONOURABLE MR. JUSTICE **D. KRISHNAKUMAR**

CRP(PD).No.62 of 2018  
and CMP.No.241 of 2018

1.Ravindran

2.Ramasamy

.. Petitioners

Vs

1.Manimalar Nithiagam

2.Malarmagal Finance,  
71, Rangar Sannathi Street,  
2nd Floor, Namakkal Town,  
Namakkal District

3.Nachimuthu

4.Kumaravel

5.Palaniyandi

6.Palaniammal

7.Periyasamy

8.Karuppannan

9.Nallusamy

Muthusamy (died)



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10.Matheswari

11.Arunkumar

12.Gowthami

13.Nallammal

.. Respondents

**PRAYER:** Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 21.09.2017 made in I.A.No.6 of 2012 in O.S.No.179 of 2001 on the file of the learned Sub Court, Namakkal.

For Petitioners

: Mr.N.Manokaran

**ORDER**

According to the revision petitioners, the revision petitioners have filed a suit in OS.No.179 of 2001 on the file of the Sub Court, Namakkal against the respondents for the relief of recovery of mortgaged properties. The said suit was transferred to the Principal District Court, Namakkal and the same was re-numbered as OS.No.54 of 2004 on the file of the learned Principal District Court, Namakkal. Again, the case was transferred to Sub Court, Namakkal and restored as OS.No.179 of 2001. The fourth respondent has filed written statement on 04.02.2005. In

the aforesaid suit, the revision petitioners has also filed an application in IA.No.6 of 2012 to amend the prayer in the plaint. The same was allowed on 27.02.2012 and the prayer was amended as to declare the sale deeds dated 24.06.1996, 23.10.2000 and 01.12.2000 executed in favour of the defendants 5 to 10 as null and void. Challenging the aforesaid order, the fourth defendant / the fourth respondent has filed a Civil Revision Petition CRP.No.1214 of 2012 before this Court, wherein this Court by order dated 25.04.2017 has allowed the same and remitted the matter to the trial court for fresh disposal. After trial, by order dated 21.09.2017, the trial court has dismissed the said application by holding that the aforesaid application filed by the revision petitioners / plaintiffs is barred by limitation. Challenging the aforesaid order, the revision petitioners have filed the present Civil Revision Petition before this Court.

2. According to the learned counsel for the revision petitioners, it is permissible to seek declaration in respect of subsequent sale deeds. Therefore, the application cannot be rejected on the ground of barred by limitation. The present application has been filed only to amend the prayer. Therefore, no

prejudice would be caused to the respondents in allowing the said application and also further contended that the said amendment is to give a conclusion to the dispute. Therefore, the order passed by the court below is liable to be set aside.

3. Heard, the learned counsel for the revision petitioners and perused the materials available on record.

4. It is an admitted fact that the revision petitioners have filed a suit in OS.No.179 of 2001 and in the aforesaid suit, the fourth defendant has filed written statement on 04.02.2005. Thereafter, the revision petitioners have filed the application in IA.No.6 of 2012 on 21.12.2011 to amend the prayer seeking for declaration that the sale deeds dated 24.06.1996, 23.10.2000 and 01.12.2000 executed in favour of the defendants 5 to 10 as null and void. In the affidavit filed by the revision petitioners in the instant application, no proper reason has been stated for filing the belated application.

5. 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."*

6. Therefore, in the light of the decision of the Hon'ble Supreme Court, the application filed by the revision petitioners seeking for the declaration prayer is admittedly beyond the period

of limitation. Therefore, there is no warrant to interfere with the orders passed by the court below.

7. In the result, the Civil Revision Petition fails and accordingly, the same is dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

**09.01.2018**

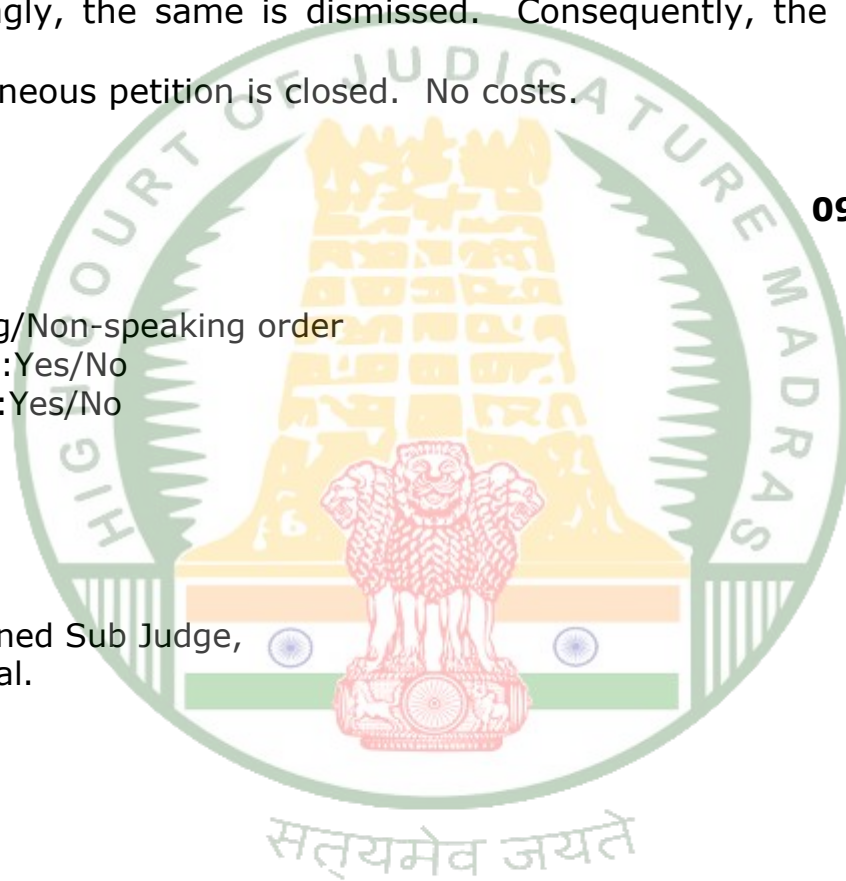
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To

The learned Sub Judge,  
Namakkal.



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**D. KRISHNAKUMAR J.,**

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