

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.02.2018

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THE HON'BLE MR. JUSTICE D. KRISHNAKUMAR

CRP.PD.No.3088 of 2016
and CMP.No.15732 of 2016

Arumugam

.. Petitioner

Vs.

Palanisamy

.. Respondent

PRAYER : The Civil Revision Petition is filed under Section 227 of the Constitution of India to set aside the order dated 15.04.2016 made in I.A.No.1505 of 2015 on the file of the District Munsif Court, Sankari.

For petitioner : Mr.r.Marudhachalamurthy

For Respondent : Mr.Zeenath Begame

ORDER

This civil revision petition has been filed to set aside the order dated 15.04.2016 passed in I.A.No.1505 of 2015 on the file of the learned District Munsif , Sankari.

2. According to the petitioner, the petitioner has filed the suit in O.S.No.89 of 2008 on the file of the learned District Munsif, Sankari seeking permanent injunction. The respondent has filed the written statement on 05.08.2008 by denying the statement of the petitioner stated that the

respondent has constructed a house in the year 1986 and continuing the possession of the suit property. The report has been submitted by the Advocate Commissioner before the Court below. The petitioner has filed the application in I.A.No.1505 of 2015 to amend the prayer by including the mandatory injunction in the aforesaid suit for removing the construction and the same was dismissed by the trial Court. Hence, the petitioner has filed the present civil revision petition before this Court.

3. The learned counsel for the petitioner would submit that the Commissioner's report along with plan filed by the Advocate Commissioner. The present application filed to amend the prayer, pursuant to the report submitted by the Advocate Commissioner. Therefore, the order passed by the Court below is liable to be set aside.

4. Per contra, the learned counsel appearing for the respondent would submit that the writ statement has been filed on 05.08.2008 wherein it is stated that the house had constructed in the year 1985. But the petitioner has filed the application after commencement of the trial, the instant application has been filed before the trial Court. Therefore, the said application filed by the petitioner is barred by limitation .

5. On perusal of the affidavit filed by the petitioner, the petitioner has not satisfied the reasons for the delay in filing the aforesaid application, admittedly, written statement was filed in the year 2005 after lapse of nine years, the present application has filed by the petitioner for mandatory injunction.

6. In the light of the Judgment of the Hon'ble Apex Court reported in **2015(6) CTC 562, L.C.Hanumanthappa vs. H.B.Shivakumar**, it has been held as follows:

29. 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 to that a legal right that had accrued in favour of the defendant should be taken away.

7. Considering the facts and circumstances of the case and the decision cited supra and considering the submission made by the learned counsel for

D.KRISHNAKUMAR,J.

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both parties, the petitioner has filed the petition under Order 6 Rule 17 of C.P.C. to amend the prayer in the aforesaid suit for mandatory injunction, admittedly, it is beyond the period of three years. The petitioner has filed the suit in the year 2005 and written statement has been filed on 05.08.2008, wherein specifically denied by the respondent/defendant in the aforesaid suit. Hence, the order of the Court below is sustained and the Civil Revision Petition is liable to be dismissed.

8. In view of the above, there is no error or illegality in the order passed by the Court below. Hence, this civil revision petition fails dismissed. No costs. Consequently, connected miscellaneous petition is closed.

12.02.2018

Index : Yes/No

Internet: Yes/No

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Note : Issue Order copy on 23.04.2018

To

The I Additional Judge,
Family Court, Chennai.CRP.PD.No.3088 of 2016
and CMP.No.15732 of 2016