

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.2.2018

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.R.P.(PD) No.3458 of 2016 and C.M.P.No.17620 of 2016

1 Kannupaiyan

2 Karthikeyan

... Petitioners/Plaintiffs

Vs.

1 Pandiyarajan

2 S.Pachamuthu

3 S.Shanmugam

4 M.Palanisamy

... Respondents/Defendants

This Civil Revision Petition is filed under Article 227 of the Constitution of India against the order, dated 22.08.2016 made in I.A.No.756 of 2016 in O.S.No.43 of 2010 on the file of the District Munsif, Sankari.

For Petitioners : Mr.M.Thanu

For Respondents : Mr.Sugantham for
Mr.N.Manokaran

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ORDER

The petitioner has filed a suit in O.S.No.43 of 2010 for declaration permanent injunction against the respondents. Written statement has been

filed by the respondents on 17.6.2010. Petitioners have filed reply statement on 10.6.2013. Thereafter, instant application has been filed to include the prayer of declaration declaring that the plaintiffs are the absolute title holders of the suit property by way of amendment in the plaint. The said application was dismissed by the court below and hence, the present Civil revision petition has been filed before this Court.

2 According to the petitioner, the suit has been filed in the year 2010 with the prayer for permanent injunction and the present application has been filed by the petitioner to include the prayer for declaration by way of amendment and denied the title claimed by the respondent and also submits that the respondents/defendants were never in possession and enjoyment of the suit property. Therefore, the order passed by the court below is liable to be set aside.

3 On perusal of the records reveals that the written statement has been filed in the year 2010 and reply statement also has been filed by the petitioner on 10.6.2013. Petitioner has not stated any reason for filing the belated application seeking to include declaration prayer by way of amendment. It is a case of the respondent that said application has been filed by the petitioner is hopelessly barred by limitation. The learned counsel for

the respondent relied upon the decision of the Hon'ble Supreme court in **L.C. HANUMANTHAPPA VS. SHIVAKUMAR [2015(6) CTC 562]** wherein the Hon'ble Supreme Court 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 *Khatiri 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*

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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."

4 In the facts and circumstances of the case and in the light of the decision cited supra, the application filed by the petitioner seeking to include the prayer for declaration by way of amendment 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.

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

26.02.2018

Speaking/Non Speaking order

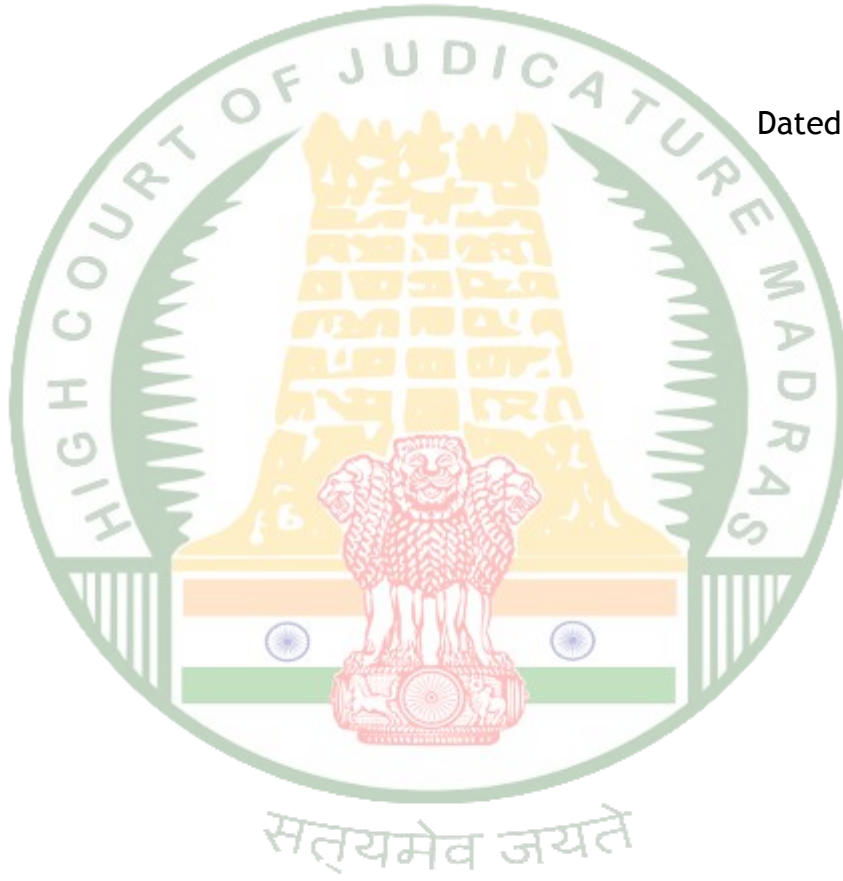
Index: Yes/No

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To

The District Munsif, Sankari.

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and C.M.P.No.17620 of 2016



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