



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 08.03.2018

DELIVERED ON : 17.04.2018

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P. (PD) (MD) No.241 of 2017

and

C.M.P. (MD) Nos.8354 of 2017 & 1108 of 2017

Ashok Kumar : Petitioner/Petitioner / Plaintiff

Vs.

Ramar : Respondent/ Respondent/ defendant

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India, against the Fair Order and Decreetal Order dated 21.10.2016, passed in I.A.No.752 of 2015 in O.S.No.167 of 2014, on the file of the District Munsif Court, Kovilpatti.

For Petitioner : Mr.V.Raghavachari

For respondent : Mr.P.Pethurajesh

ORDER

This civil revision petition has been filed as against the order, dismissing the petition for amendment of plaint.

2. The petitioner / plaintiff has filed the suit for permanent injunction. According to the petitioner / plaintiff, the suit property was originally belonged to his father and after his death, the same was succeeded by his heirs viz., the petitioner / plaintiff and his brothers and thereafter, on 03.07.2014, the petitioner's brothers and their heirs executed a release deed in favour of the petitioner / plaintiff in respect of the suit property and now, the petitioner has been in possession and enjoyment of the suit property as his absolute property, but the respondent/ defendant has been interfering with his peaceful possession and enjoyment of the suit property and therefore, he has filed the suit for permanent injunction. The respondent / defendant has filed a written statement stating that the suit property was originally belonged to the grandfather of the petitioner / plaintiff by name Subbiah and after his death, the suit property was succeeded by his sons viz., the father of the petitioner / plaintiff and two others, and they executed a registered sale deed, dated 22.09.1993, in favour of the



respondent / defendant and since then, he has been in possession and enjoyment of the same. While so, the petitioner / plaintiff has filed an application in I.A.No.752 of 2015 seeking to amend the plaint by adding the relief of declaration that the sale deed, dated 22.09.1993, is null and void. The Court below has dismissed the same holding that the said relief is barred by Section 58 of the limitation Act. Aggrieved by that order, the petitioner / plaintiff has filed this revision petition.

3. The learned counsel for the petitioner / plaintiff would submit that only after perusing the written statement, the revision petitioner / plaintiff came to know about the alleged registration of the sale deed dated 22.09.1993 by his father and paternal uncles in favour of the respondent / defendant and he found that the said document is a forged one as his father was in the habit of putting signature and therefore, he has filed amendment application. He would further submit that the Court below has erroneously dismissed the same holding that as per Article 58 of the Limitation Act, the said amendment petition ought to have been filed within three years, but the Court below has failed to take into consideration that as per Article 56 of the Limitation Act, the relief of declaration can be sought for within three years from the date of knowledge and therefore, the order impugned in this petition may be set aside and the amendment petition may be ordered by allowing this civil revision petition.

4. The learned counsel for the respondent / defendant would submit that knowing fully well about the registration of the sale deed dated 22.09.1993, the petitioner / plaintiff has purposefully not mentioned the same in the plaint and subsequently, prayed to add the same, in order to get over the limitation period, but the Court below has rightly rejected the relief sought for by the revision petitioner on the ground of limitation and the same need not be interfered with. Thus, he prayed to dismiss this civil revision petition.

5. Heard the learned counsel for both sides and perused the records carefully.

6. According to the petitioner / plaintiff, after perusing the written statement filed by the respondent / defendant, he came to know about the execution of the sale deed dated 22.09.1993 and as per Article 56 of the Limitation Act, the limitation period should be calculated from the date of knowledge. According to the respondent / defendant, as per Article 58 of the Limitation Act, the relief sought to be amended is barred by limitation.

7. At this juncture, this Court is inclined to refer to the decision of the Hon'ble Supreme Court in Rajkumar Gurawara Vs. S.K.Sarwagi & Co (P) Ltd., reported in (2008) 14 SCC 364, after considering the scope of amendment of pleadings before or after the commencement of the trial, has held in paragraph No.18 as follows:



WEB COPY

"18.... It is settled law that the grant of application for amendment be subject to certain conditions, namely, (i) when the nature of it is changed by permitting the amendment; (ii) when the amendment would result in introducing new cause of action and intends to prejudice to the other party; (iii) when allowing amendment application defeats the law of limitation."

8. As a general rule, the Court should decline amendment, if a fresh suit on the amended claims would be barred by limitation on the date of application. It is seen that the relief sought to be added by the petitioner / plaintiff is clearly barred by limitation under Section 58 of the Limitation Act. It is also seen that if the amendment petition is allowed, the same would defeat the valuable right of the limitation accrued to the respondent and the same will change the nature of the suit.

9. According to the petitioner / plaintiff, on 03.07.2014, a settlement deed has been registered in his favour in respect of the suit property. As stated by the learned counsel for the petitioner / plaintiff, there is every possibility for knowing him about the encumbrance over the suit property. It appears that in order to get over the limitation period, he has filed the said amendment application. After considering the facts and circumstances of the case, the Court below has rightly dismissed the said application. This Court does not find any reason to interfere with the order passed by the Court below.

10. In the result, this civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

1. The District Munsif,
Kovilpatti.

+1CC to Mr.V.Raghavachari Advocate, in SR.No.62075,
+1CC to Mr.P.Pethu Rajesh Advocate, in SR.No.62066.

GCG

DS/SV/MMS/SAR-1 :10.05.2018: 3P/4C

order made in

C.R.P. (MD) No.241 of 2017

17.04.2018