



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 16.02.2018

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

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CRP(PD) (MD)No.801 of 2017

and

CMP(MD)No.3626 of 2017

T.Papathi ... Petitioner/Petitioner/Plaintiff

Vs.

1.S.Raviramachandran

2.T.Muthukannammal ... Respondents/Respondents/Defendants

PRAYER:Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 03.03.2017 made in I.A.No.718 of 2016 in O.S.No.590 of 2010 on the file of the Principal District Munsif, Trichirappalli.

For Petitioner : Mr.P.Arun Jayatram

For R1 & R2 : Mr.Sundar Srinivasan

O R D E R

This revision petition has been filed against the order dated 03.03.2017 made in I.A.No.718 of 2016 in O.S.No.590 of 2010 on the file of the Principal District Munsif, Trichirappalli.

2.The learned counsel for the petitioner would submit that initially, the petitioner filed a suit in O.S.No.590 of 2010 for permanent injunction restraining the respondents/defendants from either trespassing into the suit property or by putting up construction to obstruct the use of the property. It is also stated that the respondents/ defendants have filed another suit in O.S.No.1238 of 2011.

3. Learned counsel for the petitioner would further submit that since the defendants, who are respondents herein, disputed the title of the suit schedule property and as the petitioner has failed to give some important particulars while preparing the suit in O.S.No. 590 of 2010. The petitioner filed an application for amendment of plaint. The trial court has dismissed the said application, against which, the petitioner has come forward with this Civil Revision Petition. According to the petitioner, the trial court ought not to have dismissed the application and prays for setting aside the same.



4. In support of his contention, learned counsel for the petitioner would rely on the judgments reported in **2015-2-L.W.253 in Vijayalakshmi Vs. Sadagopan & another** and **(2006) 4 Supreme Court Cases 385 in Rajesh Kumar Aggarwal And Others Vs.K.K.Modi and others.**

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5. Per contra, learned counsel for the respondents/defendants, by pointing out the amendment introduced in Order 6 Rule 17 C.P.C, submitted that the petitioner could not seek for amendment of plaint after commencement of trial, unless and until there is a pleading to the effect that in spite of due diligence the petitioner could not raise the plea in the original Plaint and therefore, the court below has rightly dismissed the amendment application and he prayed for dismissal of this Civil Revision Petition.

6. This Court has heard the submissions made on both sides and perused the materials available on record.

7. Perusal of records would show that the suit was filed in the year 2010. The respondents/defendants entered appearance on 23.06.2010. Written statement was filed on 19.10.2010 and the suit was ripe for trial on 29.11.2010 itself. In the written statement, the defendants have specifically averred that the mother of the plaintiff had no right to execute Settlement Deed in favour of the plaintiff. The petitioner/ plaintiff has come up with the amendment application after the case has been posted in the special list for trial. It is settled law that the relief of declaration has to be filed within three years from the date the cause of action arose. The respondents herein also filed a suit in O.S.No.1238 of 2011 even in the year 2011 for permanent injunction. Therefore, the application for amendment, which was filed after 3 years, is clearly barred by law of limitation.

8. In my considered opinion, the above application has been filed only to protract the proceedings and the learned Principal District Munsif, Trichirappalli, has rightly dismissed the application, which does not warrant interference by this Court.

9. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected C.M.P.(MD) No.3626 of 2017 is also dismissed.

Sd/-

Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar



To,

The Principal District Munsif,
Trichirappalli.

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+1cc to Mr.P.Arun Jayatram, Advocate Sr.No.49208

+1cc to Mr.R.Sundar Srinivasan, Advocate Sr.No.49281

CM

VB/CVC/SAR2/14/03/2018/3P/4C

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