



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.09.2018

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CRP (MD) No.1586 of 2016 (NPD)

P.Arulanandu @ Arulanandam (died)

1.T.Victoria Mari

2.A.Selvi

3.Thaines ... Petitioners/Petitioners/Plaintiffs

Vs.

1.C.Antony

2.A.John Navis

3.The District Collector,
Sivagangai.

(3rd respondent is suo motu
impleaded as per order
dated 19.09.2018)

... Respondents/Respondents/Defendants

Prayer : Civil Revision Petition is filed under Section 115 of Civil Procedure Code, to set aside the fair and decreetal order in E.P No.55 of 2011 dated 30.06.2015 in O.S No.52 of 1996 dated 24.09.1999 on the file of the Principal District Munsif cum Judicial Magistrate, Karaikudi, Sivagangai District.

For Petitioners : Mr.R.Boomirajan
For Respondents : Mr.M.Karuppasamy,
Government Advocate for R3
(suo motu impleaded)
R1 - refused
R2 - Left India

ORDER

The legal heirs of the original plaintiff are the revision petitioners herein. The original plaintiff filed O.S No.52 of 1996 before the District Munsif Court, Karaikudi seeking the relief of permanent injunction and mandatory injunction. The respondents herein were shown as defendants 1 and 2 in the suit. The Government of Tamil Nadu represented by the District Collector, Sivaganga was shown as the third defendant. The decree was passed



on 24.09.1999. To execute the same, E.P No.55 of 2011 was filed. The court below dismissed the same on the ground that the E.P is barred by limitation. Challenging the same, this civil revision petition has been filed.

2.It is true that as per Article 136 (proviso) of the Limitation Act, an application for enforcing of decree granting perpetual injunction shall not be subjected to any period of limitation. In this case, the decree is in two parts. The first part is for perpetual injunction. The other part is for mandatory injunction. As per Article 135, three years limitation period is prescribed for enforcing the decree granting mandatory injunction. Therefore, the order impugned in this civil revision petition cannot be faulted. However, it is seen that offending construction has been put up in a public path way. If that is so, the third defendant in the said suit is required to take action in accordance with law. In the present civil revision petition, the Government has not been made as a party.

3.Therefore, this Court suo motu impleads the District Collector, Sivagangai as the third respondent in this civil revision petition also. This Court directs Thiru.Karuppasamy, learned Government Advocate to take notice for the third respondent. Therefore, even while sustaining the order impugned in this civil revision petition, it is made clear that if any construction is put up by the defendants 1 and 2, it is open to the revision petitioners to file a fresh execution petition as there is no prescribing of limitation period for executing a decree for perpetual injunction. However, as regards the mandatory injunction given by the court below, this Court directs the third respondent/the District Collector, Sivagangai to take action as per law for removal of the offending construction.

4.With this direction and observation, this civil revision petition is disposed of. No costs.

Sd/

Assistant Registrar(CS-III)

/True copy/

Sub Assistant Registrar(CS-IV)

To

1.The District Collector, Sivagangai.

2.The Principal District Munsif cum

Judicial Magistrate, Karaikudi, Sivagangai District.

+1cc to Mr.R.BOOMERAJAN, Advocate, SR.No.85786

+1cc to M/s.Special Government Pleader,SR.No.85628

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19.09.2018