



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 06.12.2018

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU
C.R.P(MD)No.1719 of 2018
and
C.M.P(MD)No.7366 of 2018

R.Gunasekaran

... Petitioner/Petitioner/Plaintiff

vs.

- 1)The Tahsildar,
Dindigul West,
Dindigul.
- 2)The Revenue Divisional Officer,
Dindigul.
- 3)The District Collector,
Dindigul District.
- 4)Sellammal
Durairaj Chettiar (Died)
- 5)Deivasundari
- 6)Palaniammal
- 7)Govindammal
- 8)Lakshmi
- 9)Saravanan
- 10)Mathiyazhagan
- 11)Tamilarasi @ Tamil

... Respondents/Respondents/Defendants

Petition filed under Article 227 of the Constitution of India,pleased to set aside the fair and decreetal order passed in I.A.No.1126 of 2017 in O.S.No.274 of 2011 on the file of the Additional District Munsif Court, Dindigul, dated 04.06.2018.

For Petitioner : Mr.D.Venkatesh
For R1 to R3 : Mr.M.Karuppasamy
Government Advocate
For R4 : Mr.P.Vairava Sundaram

ORDER

This revision petition is filed against the dismissal of the petition to amend the plaint.

2.The revision petitioner/plaintiff filed a suit against the respondents/defendants for mandatory injunction and in the written statement filed by the respondents/defendants, the title of the petitioner/plaintiff was denied. Hence, the petitioner filed amendment petition to include the relief of declaration and the same was dismissed by the Court below, against which, this revision petition has been filed.

<https://hcservices.ecourts.gov.in/hcservices/>

3.Learned Counsel for the petitioner would contend that the Court below has erred in dismissing the amendment petition on the



ground of limitation without adverting to the fact that proposed amendment will avoid multiplicity of proceedings between the parties. The Court below failed to consider the dictum of the Hon'ble Supreme Court and High Courts that in order to avoid multiplicity of proceedings and to find out the real controversy between the parties, all the necessary amendments should be allowed liberally, even if the proposed amendment is altering the character of the suit. Therefore, he prays to set aside the impugned order.

4. Heard both sides and perused the records.

5. Perusal of records shows that the respondents/defendants opposed the amendment petition contending that they denied the title of the petitioner as early as 2011 in the written statement filed in the suit, but after a lapse of 5 years, the petitioner has come up with the amendment petition and therefore it is barred by limitation.

6. The Court below considered the rival submissions and extracted Order VI Rule 17 CPC which deals with amendment of pleadings, Section 3 and Article 58 of the Limitation Act and held that the petitioner filed the amendment petition after a lapse of 5 years from the date of filing of the written statement and therefore, the present petition is barred as per Article 58 of the Limitation Act. In support of its conclusion, the Court below also referred to a judgment of the Hon'ble Supreme Court in *L.C.Hanumanthappa vs. H.B.Shivkumar* reported in CDJ 2015 SC 668, wherein at paragraph 29, the Apex Court has held as follows:-

''... 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 *Khatris 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 of the defendant should be taken away.''

7. It is seen from the records that the defendants denied the title of the petitioner/plaintiff on 16.11.2011 itself through their written statement and therefore, the petitioner ought to have sought for proposed amendment within three years from 16.11.2011, but he filed the amendment application only during August 2017 which clearly shows that the said application is time barred under Article 58 of the Limitation Act. In my considered opinion, there is no infirmity in the order passed by the learned Judge dismissing the amendment application.

Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/

Assistant Registrar(CS-II)

/True copy/

Sub Assistant Registrar(CS-III)

To

The Additional District Munsif,
Dindigul.

+1cc to Mr.D.Venkatesh, Advocate, SR.No.99113

+1cc to M/s.Special Government Pleader,SR.No. 99231

C.R.P (MD) No.1719 of 2018

BALA

KK/SV/SAR-3/24.12.2018/3P-4C