



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 13.06.2018

CORAM :

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

CRP (MD) (PD) No.1471 of 2013

and

MP (MD) No.1 of 2013

Subramonia Nadar

... Petitioner

vs.

Thanulinga Nadar

... Respondent

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order passed in I.A.No.120 of 2012 in O.S.No.129 of 2010, dated 25.06.2013 on the file of the Additional District Munsif, Eraniel.

For Petitioner : Mr.T.Arul

For Respondent : Mr.A.Sivaji

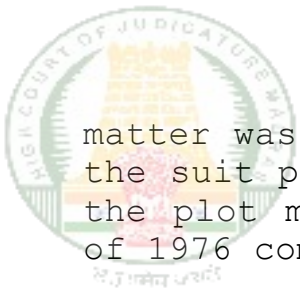
ORDER

The plaintiff in the suit in O.S.No.129 of 2010 on the file of the Additional District Munsif Court, Eraniel, is the revision petitioner herein.

2.The revision petitioner filed a suit in O.S.No.129 of 2010 for demarcation of the Northern and Eastern side of the plaint schedule property based on Ex.C.7-plan and the delivery list of the suit in O.S.No.54 of 1976 and to allow the plaintiff to put up the boundaries on the plaint schedule property in the execution proceedings and for other consequential reliefs.

3.The learned counsel for the petitioner narrated his case as follows:

(i) Alleging that defendant tried to demolish the northern and eastern boundary of the plaint schedule property, the petitioner's father filed O.S.No.104 of 2002. Later his father died and he prosecuted the suit and obtained a decree of permanent injunction dated 01.02.2010, restraining the defendant from removing the boundaries of the plaint schedule property and from disturbing the plaintiff's peaceful possession and enjoyment over the plaint schedule property. Against the judgment and decree made in O.S.No.104 of 2002, the defendant filed an appeal. In the meanwhile, on 15.06.2010, the defendant removed the eastern and northern boundary stones and the fences in the suit property and tried to grab a portion of the suit property with his property. The decree in O.S.No.104 of 2002 was set aside in appeal and the



matter was remitted. Later, when the plaintiff was not present in the suit property, on 20.01.2012, the defendant took possession of the plot mentioned as KLMN in the final decree plan in O.S.No.54 of 1976 comprised of 10.552 cents.

4. After the examination of the plaintiff as P.W.1, the plaintiff has filed the present amendment petition, to amend the plaint alleging that the defendant in the suit has encroached a portion of the suit property, which is indicated in the plan, Ex-C7, as 'KLMN' in the final decree plan in O.S.No.54/1976 measuring 10.552 cents.

5. Since the encroachment was subsequent to the suit on 20.01.2012, it is stated in the affidavit filed in support of the petition for amendment that the revision petitioner had admitted in cross-examination that the defendant has encroached.

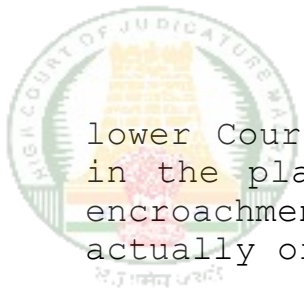
6. From the details of amendment, it can be seen that the plaintiff wanted to introduce a new prayer for recovery of possession of the portion referred as 'KLMN' in the plan Ex-C7 in the suit in O.S.No.54 of 1976. The encroached portion is described as 'B' schedule.

7. This petition was opposed by the respondent herein, stating that he never removed stones and fence of the suit property and that after completion of pleadings and evidence, the amendment petition is unwarranted and improper.

8. The lower Court observed that the plaintiff had knowledge that the defendant has encroached into the portion even on 15.06.2010 and therefore, the plaintiff who failed to seek appropriate relief at the time of filing the plaint, cannot seek the present amendment based on a new cause of action. The lower Court further observed that the plaintiff, who has knowledge about the encroachment, cannot file a petition for amendment belatedly without taking necessary steps at the appropriate time. Challenging the order of rejecting the petition for amendment, the plaintiff has preferred the above Civil Revision Petition.

9. The learned counsel appearing for the revision petitioner referred to the plan, which is marked as Ex.C7 in the final decree proceedings. It is contended by the learned counsel appearing for the petitioner that the property was allotted to the petitioner's father as per the commission plan in the final decree in O.S.No.54 of 1976. It is further contended that the respondent had encroached the suit property only after filing the written statement and therefore, the present amendment petition was filed.

10. Referring to the order passed by the trial Court, the learned counsel for the petitioner further submitted that the



lower Court failed to consider the specific plea of the plaintiff in the plaint that on 15.10.2010, there was only an attempt for encroachment and no portion of the suit property was encroached actually or taken possession by the defendants.

11. The learned counsel appearing for the respondent however reiterated the same reasons, which were assigned by the lower Court for dismissing the petition for amendment. He further stated that the plaintiff very well knew that the defendant was in enjoyment of the property all these years. It was only on account of reduction of extent that was allotted to the plaintiff in the earlier suit by way of acquisition for formation of a Road, it is stated that the petitioner now tries to make good the shortage from the property of defendant.

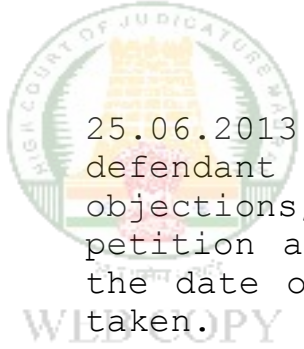
12. At this stage, this Court need not consider elaborately the merits of the case. It is not in dispute that the suit is originally filed for demarcation of boundary on the specific allegation that the boundary stones were removed by the defendant. It is the case of the revision petitioner, that the defendant encroached into the portion of the suit property on 20.01.2012, and therefore, the amendment petition was filed subsequently without any delay. The case of the respondent is that the relief cannot be granted as it was barred by limitation if the starting point of limitation is taken from the date of petition for amendment.

13. The facts pleaded by the plaintiff in the petition filed for amendment are negatived by the lower Court. This Court need not consider the merits and the allegations made in the petition at this stage. However, the petitioner / plaintiff cannot be allowed to introduce new facts by way of amendment. When specific allegations are made in the affidavit filed in support of the amendment petition, the truth of the contentions at this stage while considering the petition for amendment cannot be verified at this stage. However, as rightly contended by the learned counsel for the petitioner, the amendment petition has been filed since the respondent had encroached the suit property only after the filing of the written statement.

14. In that view of the matter, this Court is unable to justify the order of the lower Court. Whether the new prayer for recovery of possession is barred by the period of limitation or not has to be decided based on proof of certain facts. This Court at this stage has no material to dismiss the amendment petition as one barred by limitation. Therefore, considering the rival submissions and the facts and circumstances of the case, this Court is inclined to pass the following order:

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

(1) the order passed by the learned Additional District Munsif, Eraniel, in I.A.No.120 of 2012 in O.S.No.129 of 2010 dated



25.06.2013 is set aside. However, it is open to the respondent / defendant to file an additional written statement, raising all objections, repudiating the allegations made in the amendment petition and the amended plaint. For the purpose of limitation, the date on which the petition for amendment was filed has to be taken.

15.The learned counsel appearing for the petitioner has submitted that some portion of the property that was allotted to the plaintiff's father in the earlier suit for partition was acquired for a public purpose and that by way of present suit, the petitioner / plaintiff is trying to make good the loss. This aspect has been considered by the trial Court, while dismissing the petition for amendment. Since this Court has granted liberty to the petitioner to raise all his objections, it is always open to the respondent to make his submissions not only based on the facts, but also on any other legal issue.

16.With these above observations, this Civil Revision Petition is allowed and the petition in I.A.No.120 of 2012 in O.S.No.129 of 2010, dated 25.06.2013 on the file of the Additional District Munsif, Eraniel, stands allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar(CS-I)

To

The Additional District Munsif,
Eraniel.

MM

VB/MMS/SAR1/07.08.2018/4P/2C

CRP(MD) (PD) No.1471 of 2013

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