

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 07.02.2019

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THE HONOURABLE **Ms.JUSTICE P.T.ASHA**

CRP(PD).No.136 of 2019

and

C.M.P.No.1211 of 2019

1.A.G.Thaninayagam

.. Petitioner/Petitioner/Plaintiff

Vs

Agal Jeswit Society
Represented by its Secretary,
Rev.Arokkiyaraj,
Santhai Medu,
Kilpennathur Taluk,
Tiruvanamalai District.

..Respondent/Respondent/Defendant

Civil Revision Petition filed under Article 227 of the Indian Constitution to set aside the order dated 15.12.2018 made in I.A.No.807 of 2018 in O.S.No.207 of 2010 on the file of the Principal District Munsif Court, Tiruvannamalai by allowing this Civil Revision Petition.

For Petitioner : Mr.S.Panneer Selvam

For Respondent : Not ready in notice

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ORDER

The above Civil Revision Petition is filed challenging the order passed in I.A.No.807 of 2018 in O.S.No.207 of 2010, in and by which, the learned Principal District Munsif, Tiruvannamalai, has dismissed the application filed by the revision petitioner to amend the
plaint.

2 The brief facts, which are necessary for disposing of the Civil Revision Petition are as follows:

The revision petition/plaintiff had filed a suit O.S.No.207/2010, on the file of the Principal District Munsif, Tiruvannamalai District, for an permanent injunction restraining the defendant, his men, agents, servants and henchmen from in any manner interfering with the plaintiff's peaceful possession and enjoyment of the suit property and for a mandatory injunction directing the defendant to remove the stones that were gathered by him over the portion of the suit property. I am not delving into the pleadings made by the plaintiff. Suffice to state that in the written statement filed by the defendant at para Nos: 6 and 7, he would contend that the property which belong to Lucas S/o Abel was inherited by his wife Maria Josephine @ Vimala and his son Sagaya Vijayan. When Lucas died on 10.05.1970, and Maria Hosephine @ Vimala died in the year 2003, Sagaya Vijayan had settled the property in favour of the defendant under registered Settlement Deed dated 27.06.2008, registered a document No.1394 of 2008, on the file of the Sub-Registrar, Vettavalam. This written statement has been filed on 26.07.2010.

3 Eight years thereafter, on 07.11.2018, the petitioner has come forward with the impugned application wherein, in paragraph Nos.4 and 5, he would state that he very recently came to know about the Settlement Deed executed in favour of the defendant and therefore the plaint had to be amended. The application was vehemently opposed by the respondent. The learned Principal District Munsif, Tiruvannanamalai, by her order dated 15.12.2018, was also pleased to dismiss the said petition by taking note of the conduct of the petitioner in not taking steps for all these years for amending the plaint and also contending that the amending petition has been filed only when the suit has been posted in the special list for Trial. Challenging the said order, the revision petitioner is before this Court.

4 Mr.S.Panneer Selvam, learned counsel appearing on behalf of the revision petitioner would contend that the amendment is only a consequential amendment and that no prejudice would be caused to the respondents and that the issue of limitation is a mixed question of fact and law, which can be gone into at the time of trial. He also placed reliance upon the judgment of the Honourable Supreme Court of India reported in the

[2002 (7) SCC 559] in support of his contention and submitted that once amendment law is ordered, the amendment relates back to the date of the suit.

5 Heard, the learned counsel and perused the papers.

6 The amendment that the petitioner now seeks to introduce is to declare the petitioner's absolute right to the property and to declare the settlement deed dated 27.06.2008, alleged to have been executed by Lucas in favour of the defendant as null and void and that it cannot bind him. The limitation for filing the application for cancellation of a document is three years and if the amendment is allowed in the year 2018 and considering the fact that the amendment, if ordered would relate back to the date of the suit, the valuable right of the defendant would be lost. In the instant case, as early as on 26.07.2010, the defendant in his written statement has categorically stated above the settlement deed in question and also his right to the property on the basis of this deed. The petitioner did not take steps to cancel the deed, but has waited till the suit was posted in the special list.

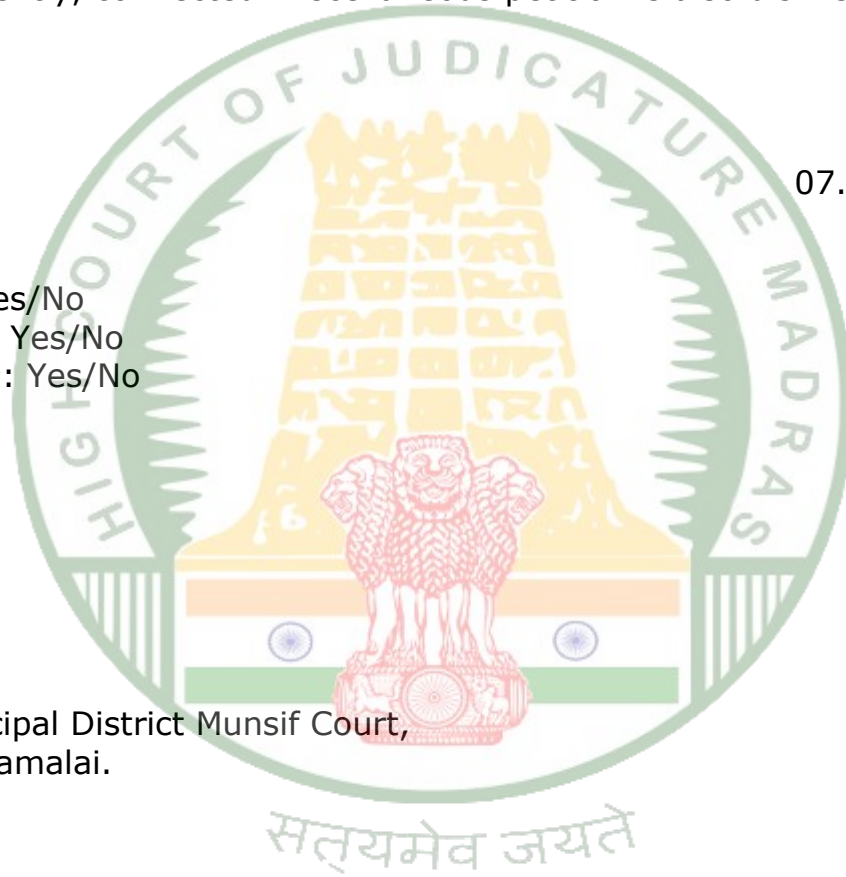
7 I find no infirmity in the order passed by the learned Principal District Munsif, Tiruvannanamalai, in rejecting the I.A.No.807 of 2018. This Civil Revision Petition stands dismissed. Consequently, connected miscellaneous petition is also dismissed.

07.02.2019

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Index: Yes/No
Internet: Yes/No
Speaking: Yes/No

To

The Principal District Munsif Court,
Tiruvannanamalai.



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P.T.ASHA, J.
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