

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.02.2019

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P(PD).No.344 & 347 of 2019

&

C.M.P.No.2474 of 2019

1.Vai.Subramanian

2.Thangarasu

...Petitioners

Vs

1.Selvaraj

2.Manickam

3.Bakkyam

... Respondents

Prayer in C.R.P.(PD)No.344 of 2019: Civil Revision Petition is filed under Article 227 of Constitution of India against the fair and decreetal orders dated 11.10.2018 in I.A.No.224 of 2018 in O.S.No.81 of 2012 on the file of the district Munsif Cum Judicial Magistrate, Tittagudi.

Prayer in C.R.P.(PD)No.347 of 2019: Civil Revision Petition is filed under Article 227 of Constitution of India against the fair and decreetal orders dated 11.10.2018 in I.A.No.223 of 2018 in O.S.No.81 of 2012 on the file of the District Munsif Cum Judicial Magistrate, Tittagudi.

For Petitioners : Mr.T.Sezhian

COMMON ORDER

The above Civil Revision Petitions are filed challenging the order passed by the District Munsif cum Judicial Magistrate, Tittagudi in I.A.No.224 and I.A.No.223 of 2018 in O.S.No.81 of 2012 whereby the learned Judge has dismissed the application filed by the revision petitioner/plaintiff to amend the plaint. The facts in brief necessary for disposing of the above Civil Revision Petitions are as follows:

2.The revision petitioner had filed a suit to declare his title to the suit property and for a permanent injunction restraining the defendants from interfering with his peaceful possession and enjoyment of the suit property. The claim of the plaintiff was refuted by the defendant wherein the defendant had contended that there was an earlier round of litigation between the parties in O.S.No.332 of 1977 where the parties have entered into a compromise. Thereafter there was another suit O.S.No.592 of 1982 and O.S.No.17 of 1996 with reference to the suit properties and the same is pending the trial. At this juncture the present suit came to be filed.

3.He would also submit that the joint patta has been granted in respect of the suit properties. Therefore there are other co-owners in the said survey numbers and the suit is hit by non-joinder of necessary parties. The suit was filed in the year 2012. Thereafter, when Trial started and the matter was posted

for the cross examination of D.W.1, the plaintiff came forward with the impugned petition to amend the present plaint. Besides other amendments the relief of mandatory injunction to recover possession is also sought to be included. In the affidavit filed in support of the petition the revision petitioner would contend that it is only after the filing of the suit that he had come to know about the encroachment as well as buildings being constructed by the plaintiff. However, no date is given in the affidavit as to when he had come into knowledge about the above. The plaintiff as P.W.1 has clearly deposed that in the year 2012 he had come to know about the encroachment and the construction of the houses and against that he had filed a suit in O.S.No.81 of 2012.

4.The amendment application was opposed by the respondents and ultimately the learned District Munsif-Cum-Judicial Magistrate, Tittagudi by her order dated 11.10.2018 was pleased to dismiss the said application stating that the same is highly belated and totally bereft of details. Challenging the same

the revision petitioner is before this Court. Another application was also moved to reopen the case in I.A.No.223 of 2018 this application was also dismissed by the learned Judge and this order is also challenged in C.R.P.No.347 of 2017.

5.Heard Mr.T.Sezhian, learned counsel for the petitioners. He would contend that it is only after the suit that they had come to know about encroachment by the revision petitioner and further even in the evidence of the plaintiff he has admitted the encroachment. That apart since it is only the case of recovery of the possession the amendment ought to have been allowed.

6.From a perusal of the papers and the defense by the counsel it is seen that the suit has been filed in 2012 only for the declaration and the injunction. The amendment petition does not show the date on which the encroachment and construction has been done by the defendant or when the plaintiff had come to knowledge about the same.

7. However in the cross examination of the plaintiff as P.W.1 he has clearly admitted that even as early as in 2012 the encroachment had taken place and the defendant had put up construction, as against which he had filed police complaint and he was advised by the Police Authorities to file a suit and consequently O.S.No.81 of 2012 came to be filed. Therefore from the above it is clear that the plaintiff was aware about the encroachment on the date of filing of the suit but however for reasons best known he has not chosen to file the suit for reliefs of mandatory injunction and recovery of possession. However, the suit has been filed in the year 2012 and the encroachment was also done in the year 2012 and therefore the suit is barred by limitation.

In these circumstances, I find no infirmity in the order passed by the learned Judge in dismissing the application in I.A.No.224 of 2018. Since I.A.No.223 of 2013 was filed to

reopen the case to carry out amendment, this application is also liable to dismissed.

In the result, the above Civil Revision Petitions are dismissed. There shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is also closed.

11.02.2019

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Index : Yes/No
Speaking order/non-speaking order

To
The District Munsif Cum Judicial Magistrate,
Tittagudi.

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P.T.ASHA, J.,

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C.M.P.No.2474 of 2019**

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