

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 17.07.2018

Delivered on: 11.06.2019

CORAM

THE HONOURABLE THIRU JUSTICE P.VELMURUGAN

C.R.P.(PD) No.1404 of 2018 &
CMP No.7538 of 2018

D.Manohar

... Petitioner/Plaintiff

- Vs -

Navaneetham

.... Respondent/Defendant

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 02.01.2018 made in I.A.No.1012 of 2013 in O.S.No.199 of 2013 on the file of the learned Sub Judge, Tambaram.

For petitioner : Mr.R.Rajarajan

For respondent : Mr.M.P.John Peter

ORDER

This Civil Revision Petition has been filed against the fair and decretal order dated 02.01.2018 made in I.A.No.1012 of 2013 in O.S.No.199 of 2013 on the file of the learned Sub Judge, Tambaram.

2. The Revision Petitioner is the plaintiff and the respondent is the defendant in O.S.No.199 of 2013. Originally, the suit was filed before the District Munsiff Court, Alandur in O.S.No.436 of 2006 and the same was transferred to the Subordinate Judge, Tambaram on the ground of pecuniary jurisdiction. The same was re-numbered as O.S.No.199 of 2013. Originally, the petitioner/plaintiff filed the suit for permanent injunction restraining the defendant, their men agents, servants, power of attorneys and other persons claiming through her from interfering with the plaintiff's peaceful possession and enjoyment of the suit property. After filing the suit, the respondent filed written statement denying his title and also the construction. The petitioner/plaintiff filed an Interlocutory Application in I.A.No.12 of 2008 for amendment of the plaint for additional prayer for mandatory injunction to demolish and remove the unauthorized construction of compound wall and part of building from his property. The said petition was dismissed by the learned Additional District Munsif, Alandur on 21.01.2009. Hence, the revision petitioner herein preferred CRP No.3764 of 2009 before this Court and same was allowed on 13.07.2011. Subsequently, the present revision petitioner filed a petition under Order VI Rule 17 of CPC in I.A.No.1012 of 2013 for amending the petition seeking declaration and recovery of the possession from the defendant, who is in unlawful possession of the suit property. The learned Subordinate Judge, Tambaram, after hearing the application, by order dated 02.01.2018, dismissed the petition on merits

stating that the relief sought for is barred by limitation and the earlier application filed by the revision petitioner in I.A.No.1901 of 2011 was suppressed and when the same is pending, the second application is not maintainable. Challenging the said order, the petitioner is before this Court by way of this Civil Revision Petition.

3. The learned counsel appearing for the petitioner would submit that originally the suit was filed before the learned District Munsif, Alandur for permanent injunction in the year of 2006 in O.S.No.436 of 2006. The respondent/defendant filed the written statement on 03.12.2007 denying the title and since she has purchased the property for her son, she had put up construction in the portion of the property. Therefore, the revision petitioner filed interlocutory application in I.A.No.12 of 2008 to amend the plaint for additional prayer for mandatory injunction to remove the construction. Though the learned District Munsif dismissed the application, the petitioner moved this Court by way of CRP.(PD) No.3764 of 2009 and the same was allowed on 13.07.2011. Subsequently, the petitioner has filed a petition under Order VI Rule 17 and Section 151 of CPC in I.A.No.1901 of 2011 to amend the plaint for the relief of declaration and the learned District Munsif returned the application and suit to present the same before the competent Court, which has got jurisdiction. When the plaint was presented before the learned Subordinate Judge, Alandur, the petitioner was under impression that

earlier application filed by him in I.A.No.1901 of 2011 was misplaced and he has filed the fresh petition in I.A.No.1012 of 2013. Even otherwise, there was no specific order passed in I.A.No.1901 of 2011 and the learned District Munsif returned the same for presenting the same before the Court having pecuniary jurisdiction only. There is no suppression of facts and there is no *res judicata*. In the circumstances, the reason assigned by the learned Subordinate Judge on the ground of suppression of application in I.A.No.1901 of 2011 is unwarranted. Further, the learned Subordinate Judge dismissed the application on the ground that the application in I.A.No.1901 of 2011 itself is barred by limitation under Article 52 of Limitation Act. Article 52 of Limitation Act is not applicable to the relief sought for by the petitioner. Therefore, the reason for dismissing the petition warrants interference.

4. The learned counsel for the respondent/defendant would submit that the suit was filed as early as in 2006 and the written statement was also filed in the year 2007. In the written statement, the respondent has denied the title of the petitioner and also she has stated about the construction made by her in the suit property. The petitioner has filed the petition to amend the plaint in I.A.No.12 of 2008 for mandatory injunction. The claim sought for by the petitioner is barred by limitation at the time of filing the petition in I.A.No.12 of 2008 and he has suppressed the said fact when he filed the application in I.A.No.1901 of 2011 before the learned District Munsif, Alandur.

Though the said application was returned along with the suit for presenting the same before the competent Court, he has not proceeded further with that application. The learned Subordinate Judge rightly pointed out the facts and dismissed the application on 02.01.2018 on the ground that the relief sought for by the petitioner is barred by limitation, which does not warrant interference.

5. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent and also perused the materials available on records.

6. It is not in dispute that the revision petitioner filed the suit before the learned District Munsif, Alandur in O.S.No.436 of 2006 for permanent injunction and after filing of the written statement by the defendants, the petitioner filed the application in I.A.No.12 of 2008 for mandatory injunction based on the averments made in the written statement and the same was dismissed by the learned District Munsiff, Alandur. Thereafter, the revision petitioner filed the revision before this Court in CRP (PD) No.3764 of 2009 and same was allowed by this Court on 13.07.2011. Before carrying out the amendment of prayer in the plaint in respect of the revision petitioner filed an interlocutory application in I.A.No.1901 of 2013 for amending the plaint, declaration of title and recovery of possession. The learned District Munsif

returned the application and suit to re-present before the competent Court which has got jurisdiction. The revision petitioner presented the suit before the learned Subordinate Judge, Tambaram and the suit was re-numbered as O.S.No.199 of 2013 and the application in I.A.No.1901 of 2011 was kept pending without assigning any new number to the said application. As stated by the learned counsel for the petitioner the petitioner was under the impression that the said application was misplaced and hence, he has filed a fresh application in I.A.No.1012 of 2013. Therefore, the non-mentioning of the application in I.A.No.1901 of 2011 in the impugned order is not fatal to the case of the petitioner. Even otherwise, there was no specific order passed on merits. Therefore, the observation made in the impugned order by the learned Subordinate Judge warrants interference. As far as the Limitation is concerned, the suit was filed in the year of 2006 and the written statement was filed in the year 2007. In this case, the amendment was sought for by the petitioner in the year 2011. Further, the issue of limitation is mixed question of law and facts whether the relief sought for in the petition is barred by limitation or not can be decided after recording evidence during the trial. The question as to whether the respondent has got title over the suit property or not can be decided only in the main suit after trial but, not at this stage. In the circumstances, this Court is of the view that the order passed by the learned Sub Judge, Tambaram warrants interference.

7. Accordingly, the Civil Revision Petition is allowed. The order dated 02.01.2018 made in I.A.No.1012 of 2013 in O.S.No.199 of 2013 passed by the learned Sub Judge, Tambaram is set aside. The petitioner is directed to carry out the necessary amendment. After filing of the amended copy of the plaint, the trial Court is directed to give an opportunity to the respondent/defendant to file the additional written statement, if any. Thereafter, the Trial Court is directed to dispose of the case on merits within a period of six months from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is also closed.

11.06.2019

Index: Yes/no

Speaking/Non-Speaking Order

Note: Issue order copy on 11.06.2019

KMI

To
The Sub Judge,
Tambaram.

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P.VELMURUGAN, J.

KMI



Pre delivery Order in
CRP PD No.1404 of 2018

11.06.2019

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