

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date:11.12.2019

Coram

The Hon'ble Mr.Justice Krishnan Ramasamy

C.R.P.(PD).No.2703 of 2013

- 1.A.Kamala (Died)
- 2.R.Anbarasu (Died)
- 3.Hemalatha
- 4.Oviya
- 5.Kaviya
- 6.Elakiya
- 7.Sirpy

... Petitioners/Petitioners/Plaintiffs

(petitioners 3 to 7 brought on record as
LRs of the deceased petitioners 1 and 2
viz., A.Kamala and R.Anbarasu vide
Court order dated 04.02.2019/11.2019
made in C.M.P.No.22818, 22819 and
22891 of 2019 in CRP.No.2703 of
2013)

Versus

1. Krishnan
- 2.Bairass
- 3.Iyser Rehman
- 4.Meeran Sahib

... Respondents/ Respondents/
Defendants.

Prayer:

Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and the Decreetal Order dated 12.12.2012, made in I.A.No.1047 of 2012 in O.S.No.820 of 1995, on the file of Additional District Munsif's Court, Poonamallee.

For Petitioners : Mr.Iyyadurai, Senior Counsel
for Mr. A.Durai Eswar.

For Respondents : Mr.N.Damodaran for RR3 & 4
: No appearance for RR1 & 2

ORDER

The Civil Revision Petition has been filed by the revisions petitioners, challenging the fair and decreetal order passed by the Court below, dated 12.12.2012 passed in I.A.No.1047 of 2012 in O.S.No.820 of 1995, whereby, the Interlocutory Application in I.A. filed by the revision petitioners/plaintiffs seeking to amend the plaint prayer was dismissed.

2. The learned Senior Counsel appearing on behalf of the revision petitioners would submit that the revisions petitioners herein are the plaintiffs, who filed the suit for the relief of delivery of vacant possession of

the 'B' schedule property and for permanent injunction, restraining the defendants from peaceful possession and enjoyment of the 'A' schedule property. It is submitted that, when the suit was initially instituted by the revision petitioners/plaintiffs, they were not aware of the existence/availability of light roof shed (measuring about 15ft x 30ft) and a hut measuring about 10ft x 10ft on the north western corner of the "A" schedule suit property and they came to know of the same only in the month of August 2012, when he cross examined the 4th defendant, who was examined as DW1, who deposed that he is putting up a light roof shed measuring about 15ft x 30ft and a hut measuring about 10ft x 10ft on the north western corner of the "A" schedule suit property and immediately, on coming to know of the same, they filed an application on 29.12.2012 before the Court below, to amend the plaint prayer seeking for additional relief of declaration. But, the Court below dismissed the application holding that the amendment application is barred by limitation due to the reasons even during the year 2009 itself, defendant filed a proof affidavit categorically setting out such details and therefore, the revision petitioners were aware of the existence of light roof shed and hut in "A" schedule suit property even in the year 2009 itself and therefore, the plaintiffs cannot plead ignorance.

3.1 Further, the learned Senior Counsel contended that even if the application for amendment is allowed, the nature and character of the suit is not going to be changed/alterd, in fact, the amendment involves the question of law and fact, and the same cannot be decided without letting in evidence by both the parties. Further, the learned Senior Counsel contended that the Court below also committed an apparent error in rejecting the application, as the Court below without going into the merits of the matter and without letting the parties to go in for trial, held that the application is barred by limitation. Therefore, he prayed for setting aside the impugned order and to allow the Civil Revision Petition.

4. The learned counsel for the respondent would contend that he has filed the written statement during the year 1997 and at paragraph No.7 of the written statement, it has been categorically stated that they are carrying on a leather business in the suit schedule property. He would further contend that, when they have filed the proof affidavit in the year 18.01.2009, they have categorically stated that they are in occupation in the 15ft x 30ft and a hut measuring about 10ft x 10ft on the north western corner of the "A"

schedule suit property and despite taking note of the same the revision petitioners have filed application seeking for amendment, to amend the plaint prayer, that too, after a period of three years, which is barred by limitation and therefore the Court below has rightly dismissed the application on the ground that the present amendment is barred by limitation and same requires no interference.

5. Heard the submissions made by both side learned counsel and perused the material available on record.

6. Originally, the revision petitioners/plaintiffs filed the suit praying for the relief of delivery of vacant possession of the 'B' schedule property and for permanent injunction, restraining the defendants from peaceful possession and enjoyment of the 'A' schedule property. In the plaint, the revision petitioners/plaintiffs averred that A Schedule property consists of about 0.75 cents land, and 0.83 cents out of 3.87 acres in S.No.223/2, New S.No.223/8 in Kattupakkam village.

7. During the pendency of the suit, on behalf of the

respondents/defendants, a proof of affidavit has been filed by DW.4, stating that they are in the occupation of the shed measures the 15ft x 30ft and a hut measuring about 10ft x 10ft on the north western corner of the "A" schedule suit property. It is merely an averment and the said averment is required to be proved by examining D.W.1. When the plaintiffs cross examined the DW.1, he has categorically deposed that they are in the possession of the light roof shed as well as the hut. Therefore, existence of the hut was proved through D.W.1 only when D.W.1 was cross-examined by the plaintiff in the month of August, 2012.

8. When the factum of possession was proved through D.W.1, in the month of August, 2012, the revision petitioner filed application on 29.12.2012, seeking amendment of the plaint prayer. When such be the case, the Court below ought not to have decided the issue of limitation at the threshold while deciding the amendment application and when it involves a disputed question of fact and law and the same can be decided only after the parties let in evidence. In such view of the matter, this Court finds that the Court below rejected the application at the threshold, without going into all these aspects. Thus, the Court below committed an error in dismissing the

application, and hence, the impugned order has to be set aside.

9. Accordingly, this Civil Revision Petition is allowed and the impugned order is set aside. Consequently, I.A.No.1047 of 2012 in O.S.No.820 of 1995 is allowed and the Court below is directed to frame a preliminary issue on limitation aspect, and thereafter, decide the said issue along with other issues framed by the Court in the suit. Since the suit has been filed in the year 1995, the Court below is directed to dispose of the suit within a period of four months from the date of receipt of copy of this order, without seeking any extension of time. No costs.

11.12.2019

jrs

Index : Yes/No

Internet: Yes/No

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C.R.P.(PD) 2703/2013

Krishnan Ramasamy. J

jrs

To

Additional District Munsif's Court,

Poonamallee.



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