

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 02.01.2019

Pronounced on : 26.04.2019

CORAM :

THE HONOURABLE MR. JUSTICE M.S.RAMESH

C.R.P(PD) No.914 of 2015

and

M.P.No.1 of 2015

P.Sundaraparipooranam

...Petitioner

Vs

1.T.V.S.Mani

2.P.N.Padmanabhan

3.Sharmila

4.Jayanthi

5.Srilatha

6.The Divisional Engineer,
Highways Department,
Chennai City Roads Division,
Chennai-600 006.

...Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decreetal order dated 12.09.2014 in I.A.No.14782 of 2011 in O.S.No.8984 of

2010 on the file of the learned II Additional Judge, City Civil Court, Chennai.

For Petitioner : Mr.R.Subramanian

For Respondent : Mr.K.V.Sundararajan
Nos.1 to 5

For Respondent-6 : No Appearance

ORDER

The petitioner herein is the plaintiff in a suit for permanent injunction as well as for mandatory injunction for removal of a gate put up in 'B' Schedule property, who had filed an interim application in I.A.No.14782 of 2011 under Order 6 Rule 17 of CPC, seeking for amendment of certain portions of the plaint as well as the other reliefs sought for therein. The trial Court had rejected the said application on 12.09.2014, which is under challenge in the present Civil Revision Petition.

2. Heard Mr.R.Subramanian, learned counsel for the petitioner and Mr.K.V.Sundararajan, learned counsel appearing for the respondents 1 to 5.

3. The learned counsel for the petitioner submitted that they are the absolute owners of the property in T.S.No.3/1, Block No.64 Jawaharlal Nehru Road, Chennai, measuring 4945 Sq. Feet. Since the respondents herein had attempted to encroach into the petitioner's property, they had filed a suit in C.S.No.177 of 2008 and an order of interim injunction has also been granted therein. The respondents herein claim to have a permissive right pursuant to the licence agreement over the properties in Survey No.37/2 & 38/2. Since the licence agreement itself had expired long back and also since the fifth respondent has denied the petitioner's title over the said property, he had filed the present application seeking for amendment of the plaint. Since the proposed amendment does not either change the nature of the case or the cause of action, the amendment petition requires to be allowed. The learned counsel for the petitioner submitted that under Order 6 Rule 17 of CPC., the amendment of the plaint can be allowed at any stage of the proceedings and since the fifth respondent herein had specifically denied the plaintiff's title, there is no bar for filing the application. As such, the question of limitation will not arise. The learned counsel also relied upon the decision of this Court in **Chitra V.**

Kannan reported in **2015 (1) CTC 820** and submitted that since the application under Order 6 Rule 17 has been filed, within a period of 3 years from the date of written statement, the same is not barred under limitation.

4. The learned counsel for the respondents 1 to 5 submitted that the application for amendment is misconceived. According to the learned counsel, the petitioner was aware of the fact that the property in question belongs to the Highways Department and these respondents have been agitating against this property for quite some time, which fact is known to the petitioner. Hence, the petitioner is not justified in filing this application seeking for declaration of the property which belong to the Highways Department and also for the reason that he had belatedly approached this Court with the amendment petition.

5. I have given careful consideration to the submissions made by the respective counsels.

6. The petitioner herein claimed to have purchased the suit property on 11.01.2008. The present suit came to be filed in the

month of May 2008. In the plaint averments itself, the petitioner herein had admitted that the defendants 1 to 5 claims that they are in permissive possession pursuant to the agreements dated 09.02.1993 and 02.03.2006 in Survey Nos.37/2 and 38/2. As such, the plaintiff was very much aware of the fact that the respondents herein had been claiming rights over the properties in Survey Nos.37/2 and 38/2. When the respondents herein had filed the suit in C.S.No.177 of 2008 before this Court, an order of interim injunction came to be granted on 27.02.2008 against the plaintiff/petitioner herein. Hence, the pleadings discloses the plaintiff's knowledge that the respondents herein were denying his title over the subject property and instead of seeking for the relief of declaration at the first instance, he had preferred to file the amendment petition in the suit in O.S.No.8984 of 2010, after a considerable delay.

7. In the application filed under Order 6 Rule 17 of CPC., the petitioner had sought for amendment of certain paragraphs in the plaint by way of deletion and substitution apart from the amendment of the main relief sought for. On a perusal of the nature of the amendment sought for in the body of the plaint, it is

seen that the petitioner had tried to bring in a totally different cause of action, wherein the rights of the respondents 1 to 5 under the licence agreement with the sixth respondent was questioned. There is no indication in the application filed for amendment that the petitioner herein was not aware of the denial of his right over the subject property. As observed earlier, the plaint averments itself goes to indicate that the petitioner had full knowledge about the claim of the respondents 1 to 5 over the subject properties, which is alleged to have belonged to the sixth respondent. While that being so, the present application under Order 6 Rule 17 of CPC., filed after more than 3 years from the date of the plaint would be deemed to be barred by the law of limitation. In my view, the amendment sought for in the present application changes the very nature of the case and the cause of action and since the petitioner's knowledge over the denial of his right from the date of the plaint itself, is barred by limitation. As such, there is no infirmity in the findings of the trial Court, rejecting the petitioner's application filed under Order 6 Rule 17 of CPC.

8. The learned counsel for the petitioner relied upon the decision of this Court in **2015 (1) CTC 820** (stated supra), in

which, it is held that the application filed within a period of 3 years from the date of the written statement would not be barred by limitation. In the instant case, the petitioner's knowledge of his title being denied arises, not from the date of written statement, but from the date of the plaint itself or even earlier and therefore, the said decision will not be of any help to him.

9. In the light of the above observations, I do not find reason to interfere with the order of the trial Court rejecting the petitioner's application filed under Order 6 Rule 17 of CPC. Hence, the Civil Revision Petition stands dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

26.04.2019

Index : Yes

Order :Speaking

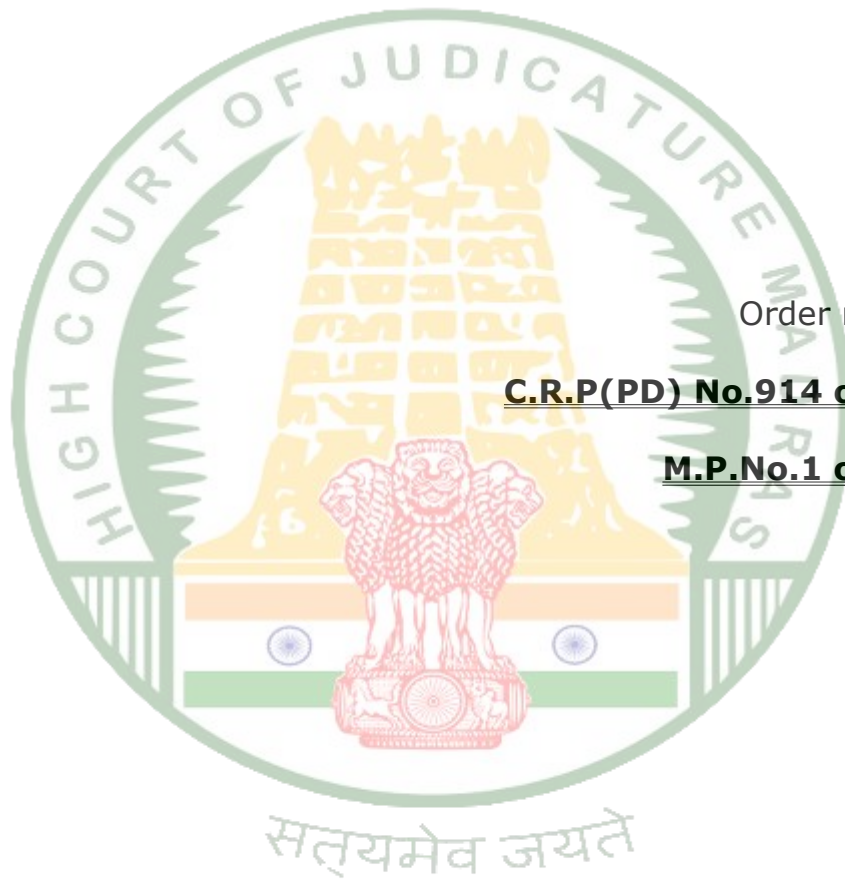
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To

The II Additional City Civil Court,
Chennai.

M.S.RAMESH, J.

DP



Order made in

C.R.P(PD) No.914 of 2015
and
M.P.No.1 of 2015

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