

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.02.2019

CORAM :

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

C.R.P(PD)No.3938 of 2013

and

M.P.No.1 of 2013

Rajeswari

.. Petitioner

Vs.

1. P.Kumaran

2. The District Collector,
Collector's Office, Thiruvanamalai,

3. The Revenue Divisional Officer,
Revenue Divisional Office, Cheyyar.

4. The Tahsildar,
Taluk Office, Cheyyar.

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the Fair and Decretal Order dated 21.02.2013 passed in I.A.No.934 of 2012 in O.S.No.293 of 2005 on the file of the Principle District Munsif Court, Cheyyar.

For Petitioner : M/s.D.KanagaSundaram

For R1 : Mr.K.R.Ramesh Kumar

For R2 : No appearance

ORDER

This Civil Revision Petition has been filed as against the Fair and Decreetal Order dated 21.02.2013 passed in I.A.No.934 of 2012 in O.S.No.293 of 2005 on the file of the Principal District Munsif Court, Cheyyar.

2. Aggrieved over the order of the trial Court dismissing the application filed under Order 6 Rule 17 CPC., filed by the revision petitioner for including the relief for declaration of title, hence, the present Civil Revision Petition has been filed.

3. The suit has been originally laid by the plaintiff on the strength of the Sale Deeds dated 13.10.1988 and 28.01.1989 respectively, and the suit has been filed for declaration of patta obtained by the first respondent, in respect of the suit property, as null and void and other consequential reliefs and for mandatory injunction restraining the first defendant or their men from interfering with the peaceful possession and enjoyment of the suit property. The defendant filed written statement inter alia contending that the plaintiff has no right over the suit property.

4. Based on the above pleadings the trial Court has framed necessary issues and one such issue relates to the title over the property. At that point of time, the plaintiff has filed an application to include the relief of declaration of the first defendant's title over the property, which was objected by the respondents, on the ground that since the first defendant has filed written statement in the year 2007, and the present petition in I.A.No.934 of 2012 seeking amendment of the plaint, filed from the year 2012, therefore, petition in I.A.No.934 of 2012 is barred by limitation. The trial Court accepted the contention of the defendants and dismissed the application on the ground that 3 years is already over and as per Section 58 of the Limitation Act only 3 years limitation is prescribed for seeking any declaration. Aggrieved over the same, the present Civil Revision Petition has been filed.

5. The learned Counsel appearing for the revision petitioner would contend that admittedly, the suit itself filed on the basis of the title of the property. The plaintiff claims title on the basis of the sale deeds and mere inclusion/amendment in the appropriate column of the plaint seeking declaration of title will not cause prejudice to the respondents. In any way, the said inclusion will not change the nature of the suit and the trial court has not appreciated the facts for allowing the application.

6. The learned counsel appearing for the respondents would contend that the first defendant has raised the defence in the year 2003 itself and the plaintiff has filed the amendment application only in the year 2007 seeking declaration and the 3 years limitation period provided under Article 58 of the Limitation Act, has already been expired. Therefore, the application is filed beyond 3 years and the same is not certainly maintainable. The trial Court has rightly exercised the discretion and dismissed the application and also submitted that the above amendment will certainly change the character of the suit. Hence, prayed for dismissal of the revision petition.

7. I have perused the entire materials particularly the plaint, written statement and application filed for amendment.

8. The plaint itself is filed for declaration, for declaring that the patta issued to the fourth defendant is null and void and also for permanent injunction not to interfere with the possession and other consequential reliefs. As the suit itself is laid on the basis of the title deeds dated 13.10.1988 in favour of the plaintiff, the plaintiff claim his rights only on the basis of the title and sought for limited declaration

earlier. Now the amendment by way of amending the plaint is sought to include the relief of declaration. Therefore, this court is of the view that since suit itself is filed based on the title of the property and one of the issue is also relating to the same issue and the issues also have been framed by the trial court, mere inclusion of relief will not change the character of the suit. It is not the case of the revision petitioner that the defendants have introduced new cause of action to claim a title. The main contention is that the declaration is barred by limitation.

9. On a perusal of the amendment application, it is very clear that the plaintiff has not introduced any new facts including law to claim declaratory title in respect of the suit property and what is sought to be included is only declaratory relief that being a position, this court is of the view that the amendment will not change the nature of the suit, since the plaintiff has laid the suit on the basis of the title based on the title deed dated 13.10.1988. Therefore, the question of limitation does not arise at all. In the given case, the plaintiff has sought for declaration in other aspects. Therefore, mere inclusion of the prayer for declaring the title in the appropriate column will not alternate the nature of the suit.

10. Accordingly the order of the trial Court is hereby set aside and the petition is allowed and the plaintiff is directed to make necessary amendment within a time provided under law and file an amended plaint copy after receiving the additional written statement if any. The trial Court shall frame further additional issues if any and dispose of the suit within a period of six months from the date of receipt of copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

11.02.2019

Index: Yes/No
Speaking/Non-Speaking
ssi

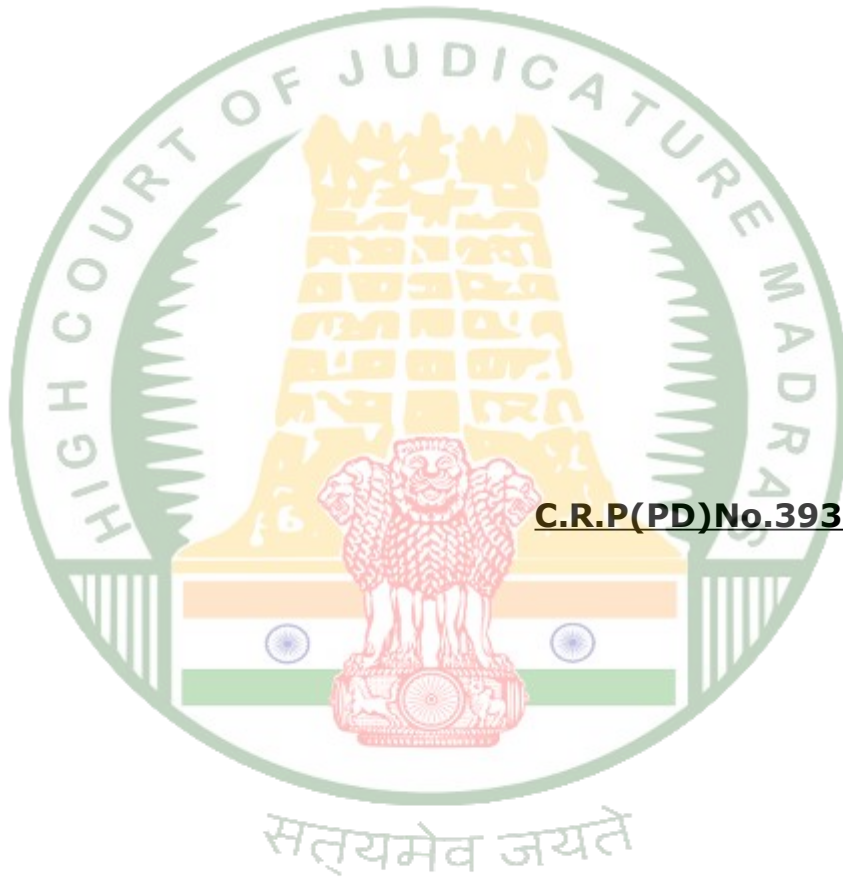
To

1. The Principle District Munsif Court, Cheyyar.
2. The Section Officer, VR Section, Madras High Court.

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N.SATHISH KUMAR, J.

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