

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.08.2019

C O R A M

THE HON'BLE Mr.JUSTICE ABDUL QUDDHOSE

C.R.P.(NPD) No.3456 of 2014 &
M.P.No.1 of 2014

1.Thangaraj
2.Mallika

... Petitioners

Chinnammal

Vs.

... Respondent

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure against the fair and decreetal order passed in I.A.No.1046 of 2011 in O.S.No.517 of 2004 dated 09.10.2012 passed by the learned District Munsif at Perambalur.

For Petitioners ... Mr.G.Ilamurugu

For Respondent ... No appearance

ORDER

WEB COPY

The instant civil revision petition has been filed challenging the order dated 09.10.2012 passed by the learned District Munsif at

Perambalur in I.A.No.1046 of 2011 in O.S.No.517 of 2004.

Brief facts leading to the filing of the instant revision under Section 115 of the Code of Civil Procedure:

2. The petitioners are the plaintiffs in the suit O.S.No. 517 of 2004 pending on the file of the learned District Munsif at Perambalur. Originally the suit was filed against the respondent for permanent injunction restraining the respondent from interfering with their peaceful possession and enjoyment of the suit schedule property. A written statement was also filed by the respondent in O.S.No.517 of 2004 denying the possession of the suit schedule properties by the petitioners and claiming that she is in possession of the suit schedule property. I.A.No.1046 of 2011 was filed by the petitioners in O.S.No.517 of 2004 under Order VI Rule 17 CPC to amend the plaint to include the relief of declaration and possession.

WEB COPY

3. A counter affidavit has also been filed in I.A.No.1046 of 2011 by the respondent stating that the amendment cannot be sought for as it

is barred by law of limitation. By order dated 09.10.2012, the learned District Munsif, Perambalur, dismissed I.A.No.1046 of 2011 in O.S.No.517 of 2004 on the ground that the application filed by the petitioners is barred by law of limitation. Aggrieved by the dismissal of I.A.No.1046 of 2011 in O.S.No.517 of 2004, the instant Civil Revision Petition has been filed under Section 115 of the Code of Civil Procedure.

4. Heard Mr.G.Ilamurugu, learned counsel for the petitioners. Even though a counsel has entered appearance on behalf of the respondent, there is no representation on the side of the respondent today. Even on the last hearing date, i.e., on 08.08.2019, there was no representation on the side of the respondent.

Discussion:

5. The learned counsel for the petitioners drew the attention of this Court to the judgment of the Hon'ble Supreme Court in the case of **Ghewarchand & others vs. Mahendra Singh & Others** reported in **2018 (3) MWN (Civil) 212**. In particular, he referred to paragraph 18 of the

said judgment which reads as follows:

“18.The Plaintiffs, therefore, filed a Civil Suit on 19.12.1978 for claiming a Declaration of their title on the Suit property, Injunction and Possession against the Defendants. Since the Suit was for Declaration, Permanent Injunction and Possession, Article 65 of the Limitation Act was applicable, which provides a limitation of 12 years for filing the Suit which is to be counted from the date when the possession of the Defendant becomes adverse to the Plaintiffs.”

As seen from the aforesaid judgment, the suit filed for declaration of title, injunction and possession will fall under Article 65 of the Limitation Act and therefore, the period of limitation is 12 years for filing the said suit and it has to be counted from the date when the possession of the defendant becomes adverse to the plaintiffs.

6. In the instant case, while the suit was originally filed, the petitioners have taken a categorical stand that they are in possession of the suit schedule property. But however, in the written statement filed on Aug 2004, the respondent has alleged that she is in possession of the

suit schedule property. The suit was filed in the year 2004 and the application for amendment filed by the petitioners under Order VI Rule 17 CPC was filed on 11.08.2011 to include the reliefs of declaration of title and possession, apart from injunction relief already sought for under the original plaint.

7. The petitioners have filed the application for amendment within the prescribed period as per Article 65 of the limitation Act, as only on Aug 2004, the respondent has disputed the claim of the petitioners that they are in possession of the suit schedule property. It is also submitted by the learned counsel for the petitioners that the trial is yet to be commenced in the suit and the application for amendment was filed only before commencement of trial. All these factors ought to have been considered by the Trial Court before dismissing the application I.A.No.1046 of 2011 in O.S.No.517 of 2004. The limitation issue, in the instant case, being a debatable issue, the Trial Court ought to have allowed the amendment application and decide the limitation issue one way or the other only after trial.

8. For the foregoing reasons, this Court is of the considered view that the impugned order passed by the Trial Court is an erroneous order and it has to be set aside.

Conclusion:

9. In the result, the impugned order dated 09.10.2012 passed by the learned District Munsif at Perambalur in I.A.No.1046 of 2011 in O.S.No.517 of 2004 is hereby set aside and the Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

09.08.2019

nl

Index : Yes / No

Internet: Yes/No

Speaking/Non-Speaking orders

To

1. The District Munsif at Perambalur.

6/8

ABDUL QUDDHOSE. J,

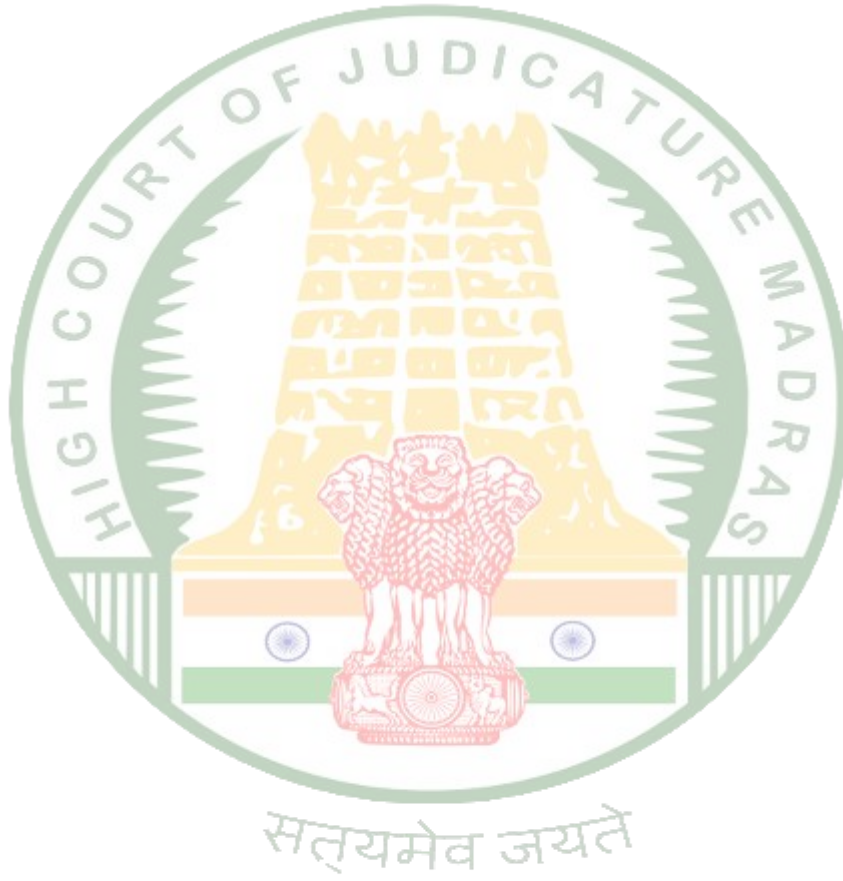
nl



CRP (NPD) No.3456 of 2014

WEB COPY

09.08.2019



WEB COPY