

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.10.2019

PRONOUNCED ON : 18.10.2019

CORAM

THE HONOURABLE Mr. JUSTICE **R.PONGIAPPAN**

C.R.P.PD.No.3965 of 2014
and M.P.No.1 of 2014

E.Marudhachalam

... Petitioner

Vs

1. V.Devaraj

2. The Executive Engineer
Tamil Nadu Slum Clearance Board,
Door No.13-A,
West Arockiyasamy Road,
R.S.Puram,
Coimbatore - 641 002.

... Respondents

PRAYER : Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 21.07.2014 made in I.A.No.408 of 2004 in O.S.No.1960 of 2009 on the file of the III Additional District Munsif Court, Coimbatore by allowing this Civil Revision Petition.

For Petitioner : Mr.N.Ponraj

For Respondents

For R1 : Mr.V.Meeakshi Sundaram

For R2 : Ms.A.Ramya
For Mr.S.Prabhu

ORDER

Challenging the order dated 21.07.2014, passed in I.A.No.408 of 2014 in O.S.No.1960 of 2009 on the file of the III Additional District Munsif Court, Coimbatore, the petitioner, who is the first defendant in the said suit filed this Civil Revision Petition.

2. Before the trial Court, the first respondent in this revision petition, as a plaintiff, filed a suit in O.S.No.1960 of 2009, as against the petitioner and against the second respondent, for the relief of permanent injunction restraining the petitioner/defendant, his men and agents in any way putting up the construction in the common pathway situated in front of the suit property. Further he has prayed for the relief of permanent injunction restraining the petitioner/defendant, his men and agents in any way interfere into the peaceful enjoyment and use of common pathway. सत्यमेव जयते

3. In the said suit after filing of the written statement, when the case was posted for trial, the first respondent/plaintiff filed an application in I.A.No.408 of 2014, under Order 6 Rule 17 of C.P.C., and prayed to permit him to amend the plaint, through which he wanted to incorporate one more prayer of mandatory injunction. The learned III

Additional District Munsif, Coimbatore, after affording opportunities to the petitioner/first defendant, by an order dated 21.07.2014, allowed the said application filed by the first respondent/plaintiff. Challenging the same, the petitioner is before this Court with the present Civil Revision Petition.

4. Today when this petition is taken up for hearing, the learned counsel appearing for the petitioner and the respondents are present and made their submissions.

5. The learned counsel appearing for the petitioner would contend that in the affidavit filed by the first respondent before the trial Court, he has stated that during the pendency of the suit, the petitioner/first defendant illegally constructed his house by partly encroaching into the 1.10 meters east-west pathway, entire north-south pathway and the vacant site situated at the southern side of the suit property. Further he has stated that the said fact was known to him only on 11.10.2010, by way of the information given by the second respondent. So as per the averments made in the affidavit, the first respondent had the knowledge of the alleged construction and other details made in the common pathway, in the year 2010 itself. But

immediately after knowing the same, he has not taken any steps to amend the plaint. Only in the year 2014, after lapse of four years, he filed the amendment application for incorporating the prayer of mandatory injunction, which is bared by limitation. But the trial Court without considering the said issue allowed the application filed by the first respondent, which is erroneous in law.

6. On the other hand, the learned counsel appearing for the first respondent would contend that immediately after knowing the details of encroachment, the application for amending the plaint was filed. The learned III Additional District Munsif, Coimbatore, has also considered the background of the case i.e., for removing the encroachment made by the petitioner herein, allowed the said application and permitted the first respondent to carryout the amendment, in which the trial court has not committed any error.

7. The submissions made by the learned counsels on either side are considered.

8. As per the avernments set out by the first respondent in the affidavit filed in support of the amendment petition, the first respondent has stated that he came to the knowledge of unauthorized

construction only on 11.10.2010. But he has filed an application to amend the plaint only in the year 2014, after the lapse of four years.

9. Since the relief sought for by the first respondent before the trial Court is for incorporating the prayer of mandatory injunction in the plaint, it is necessary to see the judgement of this Court, reported in **2011 (6) CTC 477** in the case of **Chinnu Padayachi and another Vs. Dhanalakshmi and others**, which held as follows :-

"15. In the given case on hand, it is alleged by the respondents that the petitioners have put up the construction in the common lane. It cannot be considered as a continuous wrong. The construction in the common passage, as held by the Delhi High Court cannot be considered as a continuous breach, which will entitle the respondents to file application for amendment at any point of time, even after the prescribed period of three years, saying Section 22 of the Limitation Act will attract.

16. In view of the above stated position, I am of the considered view that the amendment that has been sought for by the respondents which was allowed by the Court below, is on the face of it is barred by limitation."

10. Further this Court in the judgment reported in **2014 (2) CTC 655** in the case of **Ferani Hotels Private Ltd. Vs. K.Raheja Development Corporation, (KRDC), Mumbai**, has held as follows :-

"27..... even as per the averments of the plaint and the accompanying affidavit filed by the respondent / plaintiff, the amendment sought for is after a period of three years limitation and therefore, in the light of the decisions rendered by the Hon'ble Supreme Court, permitting to make such an amendment under Order 6 Rule 17 CPC would be prejudicial to the rights of the petitioner, as the relief sought for is barred by limitation."

11. In the light of the various decision as referred above, rendered by this Court as well as the Hon'ble Apex Court, it has been made clear that while allowing the petition under Order 6 Rule 17 of C.P.C., the Court has to consider whether the amendment would cause prejudice to either party and the relief sought for is barred by limitation. The said amendment cannot be allowed, if it would cause prejudice to either side.

12. In the case on hand, it is not in dispute that the first respondent/plaintiff gained the knowledge in respect of the unauthorized construction in the common land in the year 2010 itself. But he has filed an application only in the year 2014. Therefore, only after the period of limitation, he has filed the application before the trial Court. So if the application filed by the first respondent is allowed in his favour, definitely prejudice would cause to the petitioner and therefore, this Court feels that the impugned order passed by the learned III Additional District Munsif, Coimbatore, has necessarily to be interfered.

13. More than that, on going through the written statement filed by the petitioner, he has narrated his case that at no point of time he has constructed any buildings or put up any other construction in the common pathway. Further it was the case of the petitioner that no body can claim title in respect of the common pathway, which is in the nature of an easement. According to him, the first respondent is not having any right in the suit schedule property. In this aspect, since the title is denied by the petitioner, it is necessary for the first respondent to file a suit for the relief of declaration and for recovery of possession. But hear the suit is filed by the first respondent only for the permanent injunction.

14. So in all aspects, allowing of amendment application filed by the first respondent is having material irregularity and no relief can be granted after the period of limitation. Therefore, I am of the considered opinion that the order dated 21.07.2014 passed by the the learned III Additional District Munsif, Coimbatore, in I.A.No.408 of 2004 in O.S.No.1960 of 2009, is necessarily to be set aside and accordingly set aside.

15. In view of the above, this Civil Revision Petition is allowed. Consequently, connected miscellaneous petition is closed. No costs.

18.10.2019

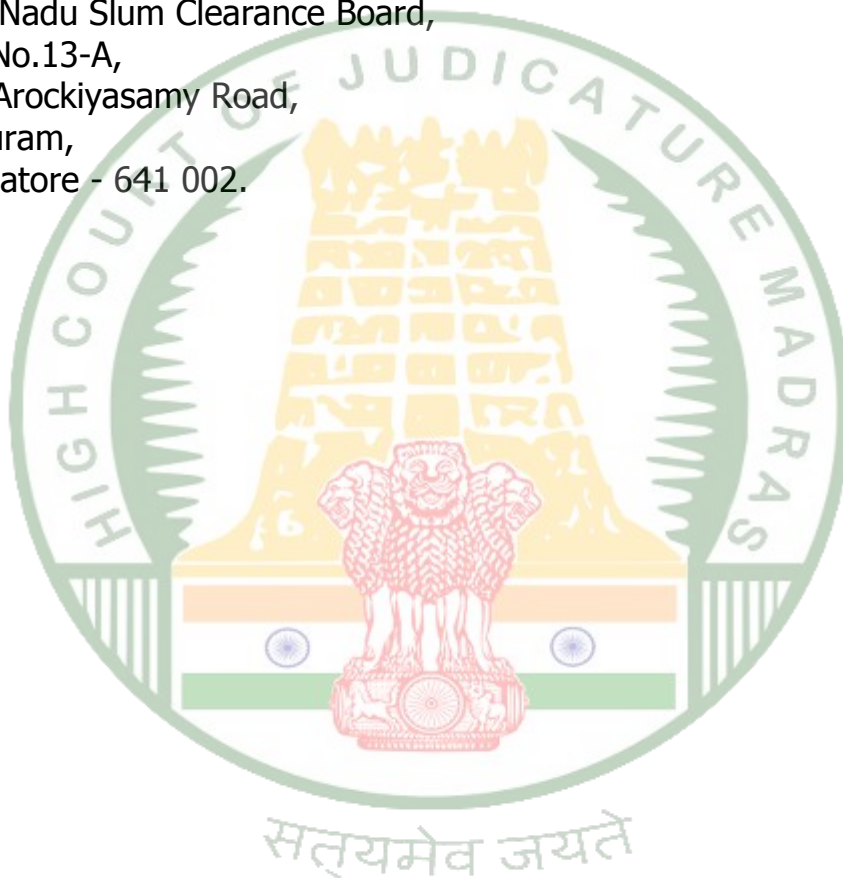
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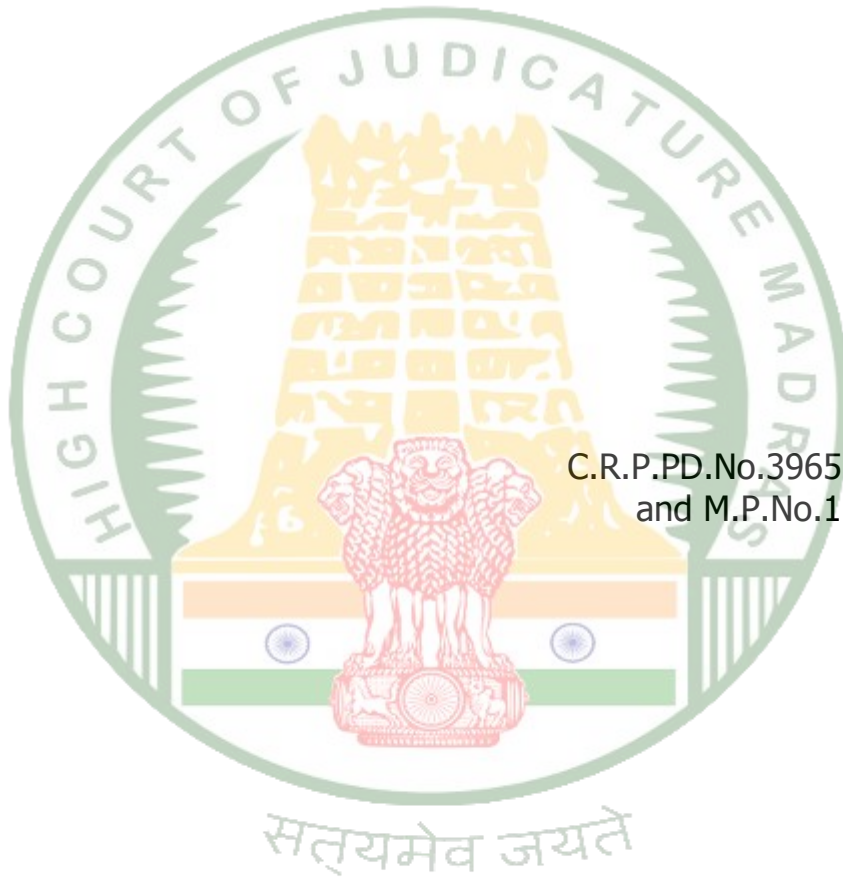
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