

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **29.07.2019**

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.R.P.(PD)No.4326 of 2014
and M.P.No.1 of 2014

Kunjayammal

...Petitioner

vs.

1.Shanthi

2.M.Periyasamy

3.T.Mani

...Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order of the learned District Munsif, Uthangarai dated 18.07.2014 made in I.A.No.7/2013 in O.S.No.124/2004.

For Petitioner : Mr.I.Abrar Md. Abdullah

For Respondent : Mr.N.Parimalam
representing counsel for
Mr.S.Umapathy for R1

ORDER

The instant Civil Revision Petition has been filed challenging the order dated 18.07.2014, passed by the learned District Munsif, Uthangarai in I.A.No.7 of 2013 in O.S.No.124 of 2004.

Brief facts leading to the filing of the instant revision:

2.The petitioner is the plaintiff in the suit O.S.No.124 of 2004 filed against the respondents which is now pending on the file of the learned District Munsif cum Judicial Magistrate Court, Uthangarai. Originally the suit was filed for permanent injunction restraining the respondents/defendants from interfering with his peaceful possession and enjoyment of the suit schedule property. A written statement was also filed by the first respondent, who is the first defendant in the suit O.S.No.124 of 2004 denying the allegations contained in the plaint filed in O.S.No.124 of 2004 and stating that the first respondent/first defendant is the absolute owner of the suit schedule property and the petitioner/plaintiff does not have any right over the same. The written statement was filed on 16.11.2004. However, only on 10.12.2012, the petitioner/plaintiff filed I.A.No.7 of 2013 in O.S.No.124 of 2004, seeking to amend the plaint to include the relief of declaration that the petitioner/plaintiff is the absolute owner of the suit schedule property and has also sought for deletion of 7th and 8th items in the suit schedule property from and out of the properties, which are the subject matter of the dispute. A counter affidavit was also filed by the

respondents/defendants in I.A.No.7 of 2013 filed by the petitioner/plaintiff.

3.By order dated 18.07.2014, the trial Court dismissed I.A.No.7 of 2013 filed by the petitioner/plaintiff on the ground that if the amendment sought for by the petitioner/plaintiff is allowed, it will bring a new cause of action which is barred by law of limitation.

4.Aggrieved by the order dated 18.07.2014, passed in I.A.No.7 of 2013 in O.S.No.124 of 2004, the instant Civil Revision Petition has been filed by the petitioner/plaintiff under Article 227 of the Constitution of India.

5.Heard Mr.I.Abrar Md. Abdullah, learned counsel for the petitioner and Mr.N.Parimalam, learned counsel for the first respondent.

6.Admittedly, the written statement was filed by the respondents/defendants in the suit O.S.No.124 of 2004 on 16.11.2004 itself. In the written statement, the respondents/defendants have categorically pleaded that the petitioner/plaintiff does not have any right or title over the suit

schedule property and it is absolutely owned by them. Even though, the said plea was taken by the respondents/defendants as early as in the year 2004 itself through their written statement, the petitioner/plaintiff filed an application to amend the plaint in I.A.No.7 of 2013 only on 10.12.2012 after a lapse of almost 8 years.

7.Having come to know about the dispute as regards title raised by the respondents/defendants from their written statement which was filed in the year 2004, as a vigilant litigant, the petitioner/plaintiff ought to have filed the amendment application immediately or atleast before the limitation period. But, in the instant case, he has chosen to file it only after a lapse of almost 8 years from the date of the written statement.

8.As seen from the impugned order, the suit was posted for trial in the special list on 05.10.2007 and thereafter, it was delisted. It has also been observed in the impugned order that the suit was once again posted for trial in the special list on 02.07.2009 and once again delisted. The suit was thereafter, referred to the Lok Adalat. But, since there was no settlement, the matter was referred

back to the Court and posted for trial in the special list on 02.12.2011. The trial Court has also observed that subsequent to the posting of the suit in the special list on 02.12.2011 and after a lapse of considerable time, the petitioner/plaintiff came forward with the application I.A.No.7 of 2013 which came to be dismissed by the trial Court, which is the subject matter of revision before this Court. The trial Court has observed that only to drag on the proceedings, I.A.No.7 of 2013 has been filed by the petitioner/plaintiff.

9.It is seen from the plaint filed in support of O.S.No.124 of 2004, no Order 2 Rule 2 application has also been filed along with the said plaint reserving right for any further claim in respect of the same suit schedule property.

10.As seen from the affidavit filed in support of I.A.No.7 of 2013, no reason has been given whatsoever by the petitioner/plaintiff for the delay in filing the application for amendment. Originally, the suit was filed for bare injunction whereas the amendment sought for by the petitioner in I.A.No.7 of 2013 is to include the relief of declaration and also for deletion of 7th and 8th items of properties from the subject matter of the suit.

11.After considering all these factors, the trial Court has come to the right conclusion that if the amendment sought for by the petitioner/plaintiff is allowed, it will bring new cause of action, which is barred by law of limitation.

12.For the foregoing reasons, this Court does not find any infirmity in the order passed by the trial Court and there is no merit in the same.

13.Accordingly, the Civil Revision Petition shall stand dismissed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

29.07.2019

Index: Yes/No

Internet: Yes/No

Speaking Order/Non-Speaking Order
pam

WEB COPY

To

The District Munsif, Uthangarai.

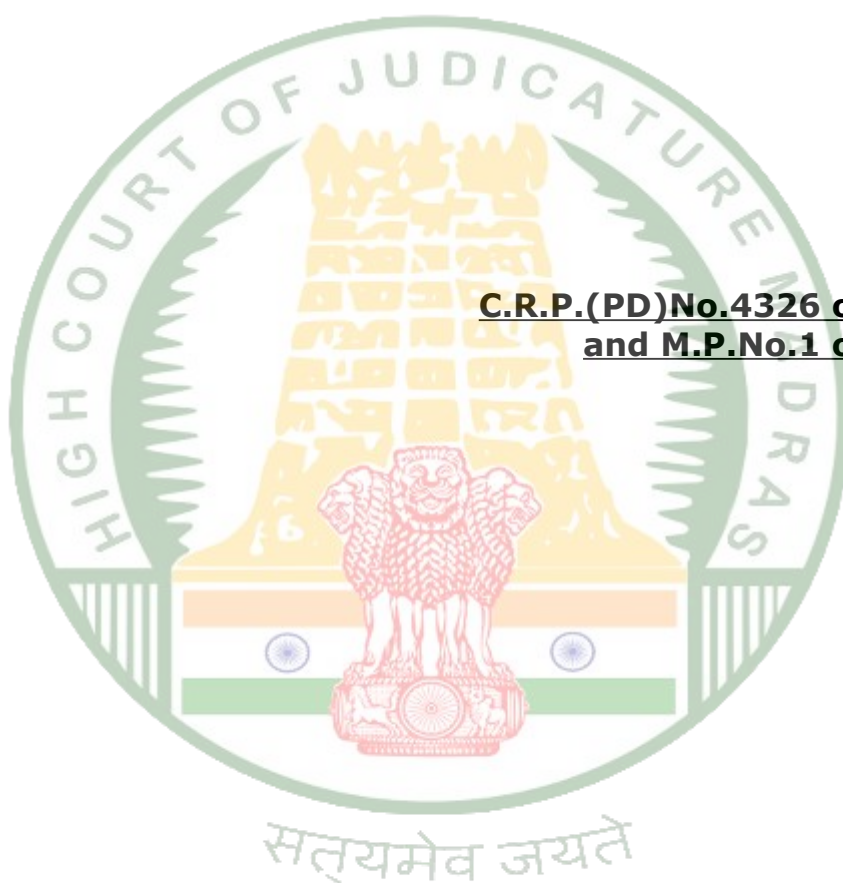


WEB COPY

C.R.P.(PD)No.4326 of 2014

ABDUL QUDDHOSE, J.

pam



C.R.P.(PD)No.4326 of 2014
and M.P.No.1 of 2014

WEB COPY

29.07.2019