

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 21.11.2019

Pronounced On : 10.12.2019

CORAM:

THE HON'BLE Mr. JUSTICE R.PONGIAPPAN

Civil Revision Petition (PD) No.4936 of 2014

and

M.P.No.1 of 2014

Srinivasan

.. Petitioner

Vs

Kathady @ Anthonisamy (died)

1. Yesudoss

2. State of Tamilnadu rep. By
The District Collector, Perambalur

3. The Revenue Divisional Officer,
Udayarpalayam.

4. The Tahsildar,
Jayankondam

5. Seguli Ammal

6. Mary

7. Arulmary

8. Chinnapparaj

.. Respondents

[R6 to R8 have been already recorded in the CRP as legal heirs of the deceased R5 vide Court order dated 27.09.2019 made in CRP No.4936/2014 and as per memo dt. 22.10.18 USR No.96017/18 are recorded (RPAJ)]

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the Fair and Decreetal order dated 30.01.2014 made in

I.A.No.866 of 2013 in O.S.No.274 of 2006, on the file of the District Munsif Court, Jayankondam.

For Petitioner : Mr.S.Nagarajan

For Respondents : Mr.N.Manikandan (for R2, R3 & R4)
Government Advocate.
R5-Died
No appearance (for R1, R6 & R7)
Mr.S.Mahimai Raj (for R8)

ORDER

The plaintiff in OS No.274 of 2006, on the file of District Munsif Court, Jayakondam, is the petitioner herein. Before the said Court, he filed a suit as against the respondents, seeking the relief of permanent injunction restraining the defendants, their men and agents from making any construction at any point over the suit poramboke cart tract.

2. When the suit is pending for enquiry, the petitioner herein, filed an application in IA No.866 of 2013, under Order 6 Rules 16 & 17 of the CPC, praying to permit the petitioner to amend the plaint, whereby he wanted to incorporate the prayer of mandatory injunction, as against the defendants 6 to 9 to remove the thatched house situated on the Eastern side of the suit property and also to remove the Kalli fence standing on the North-South direction, which is situated just western to the thatched house put up by the 1st defendant.

3. The learned District Munsif, Jayankondam, after affording sufficient opportunity to the respondents/defendants, by order dated 30.01.2014, dismissed the application filed by the petitioner.

4. In the impugned order, the learned District Munsif, Jayankondam, has held that the petitioner after knowing the encroachment made by the defendants, immediately, has not filed an application to amend the plaint within the period of three years and thereby, the prayer wanted to be incorporated in the prayer column (mandatory injunction) is barred by the law of limitation and therefore, the application filed by the petitioner is not maintainable.

5. Aggrieved over the findings arrived at by the Court below, the petitioner is before this Court with the present Civil Revision Petition.

6. Today, when the Civil Revision Petition came up for hearing, the learned counsel appearing for the petitioner was present and would contend that in the plaint, the petitioner has clearly stated that the suit property is a public cart tract. In the suit cart tract, both the plaintiff and the defendants are having the right to use, as a cart tract. Only now, the defendants have put up a thatched house and therefore, the amendment is necessary for rendering real justice.

7. On the other hand, the learned counsel appearing for the respondents would contend that for the relief of mandatory injunction, the petitioner has to file an application within a period of three years, but before the trial Court, the petitioner has not taken any steps to file an application for amendment, within the period of limitation. Further, he would submit that in the report filed by the Advocate Commissioner dated 26.08.2009 itself, the learned Advocate Commissioner had clearly mentioned the encroachment made in the suit schedule property. Accordingly, the petitioner wanted to introduce a new case and therefore, the prayer sought for by the petitioner, cannot be maintained. Accordingly, he prayed to confirm the findings arrived at by the Court below.

8. Upon considering the arguments advanced by either side, in the plaint, the petitioner has sought for the relief of permanent injunction restraining the defendants in interfering with the use of suit cart tract. In the report filed by the learned Advocate Commissioner, it was mentioned that when the suit property was inspected for the first time on 17.10.2006, the house was under construction and thereafter on 03.09.2009, during the time of revisiting the suit property, the construction of the building was completed. Only in the said occasion, placing reliance on the Advocate Commissioner's Report, the lower Court has held that the application for the

relief of mandatory injunction has not been filed within the period of limitation.

9. In this regard, it is necessary to see the judgment in ***Hari Ram Vs. Jyoti Prasad and Anr.***, reported in **AIR 2011 SC 952** wherein, our Hon'ble Apex Court has held as follows:

“Any act of encroachment is a wrong committed by the doer. Such an encroachment when made to a public property like encroachment to public road would be a graver wrong, as such wrong prejudicially affects a number of people and therefore is a public wrong. So long any obstruction or obstacle is created to free and unhindered access and movement in the road, the wrongful act continues thereby preventing the persons to use the public road freely and unhindered. Therefore, that being a continuing source of wrong and injury, cause of action is created as long as such injury continues and as long as the doer is responsible for causing such injury. Therefore it cannot be said that the suit for mandatory injunction and for removal of encroachment is barred by limitation.”

10. Applying the principles set out in the above referred judgment to the case in our hand, the petitioner herein has filed the suit only in respect to the public cart tract. Hence, though the application for amendment was filed after a lapse of three years, it cannot be said that the same was barred by limitation.

11. Further, as of now, the allegation levelled by the petitioner against the defendants is that only during the time of pendency of the suit, the defendants constructed a house in the suit scheduled property and therefore, it is necessary to remove the same for rendering real justice. Moreover, the genuineness of the said allegation has to be decided, only at the time of trial. In otherwise, it cannot be said that the petitioner has attempted to introduce a new case. In fact the relief of mandatory injunction is a consequential relief for allowing the relief of injunction simpliciter.

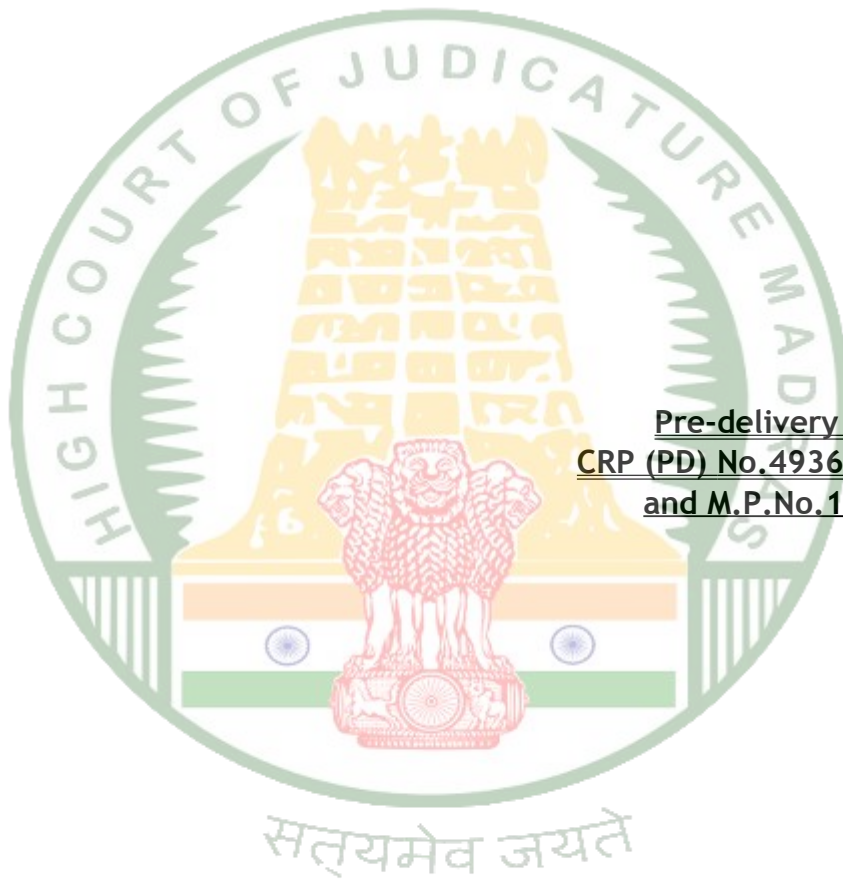
12. Therefore, this Court is of the considered view that the relief sought for by the petitioner is not barred by the Limitation Act and further, as stated supra, allowing the application for amendment, is necessary for rendering the real justice. Therefore, in the light of the above discussion, the order dated 30.01.2014 made in I.A.No.866 of 2013 in O.S.No.274 of 2006, on the file of the District Munsif Court, Jayankondam, is set aside and the Civil Revision Petition is allowed. No Costs. Consequently, the connected Miscellaneous Petition is closed.

10.12.2019

Speaking/Non-speaking order
Index: Yes/No
Internet: Yes
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R.PONGIAPPAN, J.,
ars

To
The District Munsif Court, Jayankondam,



Pre-delivery order in
CRP (PD) No.4936 of 2014
and M.P.No.1 of 2014

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