



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.08.2019

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THE HONOURABLE MR.JUSTICE **S . S . SUNDAR**

C.R.P. (MD) (PD)No.1602 of 2011

and

M.P. (MD)No.1 of 2011

Vasantha

:Petitioner/ 3rd Respondent/
3rd Defendant

vs.

1.Senathipathi

... 1st Respondent/ Petitioner/
Plaintiff

2.Selvamohan

3.Sekar

:Respondents 2 & 3/ 1 & 2 Respondents/
1 & 2 Defendants

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the order made in I.A.No.749 of 2010 in O.S.No.184 of 2005 on the file of the Additional District Munsif Court, Lalgudi, dated 23.03.2011.

For Petitioner :Mr.R.Sundar

For Respondents :Ms.J.Maria Rosaline

ORDER

This Civil Revision Petition is directed against the order allowing the petition for amendment of plaint filed by the first respondent.

2.The first respondent/plaintiff filed a suit in O.S.No.184 of 2005 before the Additional District Munsif Court, Lalgudi for declaration that the plaint 'E' schedule property belongs to the plaintiff and for a consequential relief directing the third defendant to deliver vacant possession of 'E' schedule property, after removing the superstructure. The reading of the plaint indicates that the suit is for declaration of title and for mandatory injunction to direct the third defendant to deliver the property, namely, plaint 'E' schedule property, which is encroached by the third defendant.

3.It is admitted that an Advocate Commissioner was appointed for the purpose of ascertaining the encroachment made by the third



defendant. It is also admitted that the encroached portion, as per the Commissioner's report is more than, what was mentioned in the plaint. It is in the said circumstances, the first respondent herein, filed a petition for amendment of plaint to extend the relief in terms of the Advocate Commissioner's report and plan. The said petition was opposed by the third defendant. The trial Court, however, allowed the petition, after holding that no prejudice is likely to be caused to the defendants by virtue of the amendment. Since amendment petition is in tune with the encroachment found by the Commissioner in his report, the trial Court found observed that the petition for amendment cannot be dismissed.

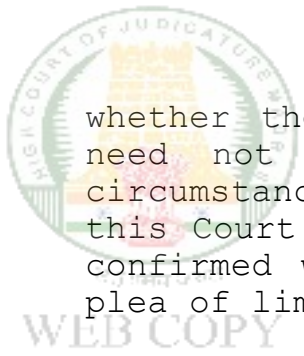
4.The revision petitioner raised an issue regarding limitation. According to him, the Commissioner has inspected the property and filed his report in the year 2006 and that the petition for amendment was filed in the year 2010. It is in the stated circumstances, the plea of limitation was raised by the revision petitioner. However, the trial Court observed that the question of limitation cannot be decided at this stage to dismiss the petition for amendment. Aggrieved by the order of trial, the third defendant preferred the above Civil Revision Petition.

5.The learned Counsel for the revision petitioner submitted that the new prayer is barred by limitation, since it is admitted that the plaintiff has come forward to amend the plaint only on the strength of Advocate Commissioner's report. It is also contended that the Commissioner's report being filed in the year 2006, the petition for amendment, which was filed in the year 2010, is barred by limitation. The learned Counsel further submitted that the trial Court failed to address the grievance of the revision petitioner while allowing additional relief.

6.The learned Counsel for the respondents relied upon the judgment of Honourable Supreme Court in the case of **Surender Kumar Sharma vs Makhan Singh**, reported in **(2009) 10 SCC 626**, wherein, the Honourable Supreme Court has held that the petition for amendment cannot be rejected, merely, on the ground of delay, if the Court finds that the real controversy between the parties can be resolved by allowing the application for amendment. It is also held that the Court, in the matter of allowing the petition for amendment, has wide discretion. The learned Counsel for the respondent then submitted that the petition for amendment in this case cannot be dismissed merely on the ground of delay.

7.This Court considered the rival submissions on both sides.

8.Having regard to the admitted facts and circumstances of the case, this Court is of the view that the plea of limitation raised by the revision petitioner is well founded. However, the question



whether the new relief introduced is barred by limitation or not need not be decided at this stage. There may be various circumstances, that can save limitation. In such circumstances, this Court is of the view that the order of the lower Court can be confirmed with a protection to the revision petitioner to raise a plea of limitation as a defence in the suit.

9. Accordingly, this Civil Revision Petition is dismissed and the order in I.A.No.749 of 2010 in O.S.No.184 of 2005 passed by the Additional District Munsif, Lalgudi, dated 23.03.2011, is confirmed. However, the revision petitioner is at liberty to raise the plea of limitation as regards the prayer that is now introduced by way of amendment. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar

To

The Additional District Munsif, Lalgudi.

+1 CC to M/s.J. MARIA ROSELINE, Advocate (SR-83713[F] dated 28/08/2019)

+1 CC to M/s.R. SUNDAR, Advocate (SR-83745[F] dated 28/08/2019)

C.R.P. (MD) (PD) No.1602 of 2011
27.08.2019

CMR

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