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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 22.02.2019
DELIVERED ON : 11.03.2019

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (NPD) (MD) No.661 of 2015
and
M.P. (MD) No.1 of 2015

Perumayee (Died)

1.Gopal

2.Geetha

.. Petitioner/Petitioner/Plaintiffs 3 and 4

Vs.

1.Periyasamy

2.Mookan

..Respondent/Respondent/Defendant

.. Respondents/Respondent/1st Plaintiff

Prayer : This Civil revision petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 03.12.2014 in I.A.No.1210 of 2013 in O.S.No.237 of 2003 on the file of the learned District Munsif, Musiri.

For Petitioners

For 1st Respondent

For 2nd Respondent

: Ms.Maria Vinola

: Mr.P.Mani Anandh

: No Appearance

ORDER

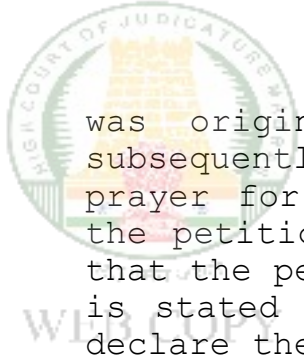
Heard Ms.Maria Vinola, learned counsel appearing for the petitioners and Mr.P.Mani Anandh, learned counsel appearing for the first respondent.

2.This petition has been filed against the order passed in I.A.No.1210 of 2013 in O.S.No.237 of 2003 dated 03.12.2014 on the file of the learned District Munsif, Musiri.

3.The petitioners are the plaintiffs 3 and 4, the first respondent is the defendant and the second respondent is the first plaintiff in the suit. The plaintiffs filed a suit in O.S.No.237 of 2003 before the learned District Munsif, Musiri for a prayer of recovery of the arrears of rent and for future profits. In that suit, the petitioners filed a petition in I.A.No.1210 of 2013 seeking permission to amend the plaint and the petition was dismissed by the trial Court. Against the order of dismissal, the petitioners have filed the present revision petition.

<https://hcservices.ecourts.gov.in/hcservices/>

4.On the side of the petitioners, it is stated that the suit



was originally filed for a prayer of recovery of money and subsequently, the petitioners wanted to amend the plaint including a prayer for declaration of title but the lower Court has dismissed the petition stating that the prayer sought for is time barred and that the petitioners have already filed an amendment petition and it is stated that amendment petition was filed by the petitioners to declare the fourth plaintiff as major and not for altering any other facts as stated in the petition. This amendment is only at the stage of pre-trial and that the evidence is not yet commenced. The part of limitation is only mixed question of law and fact and the fact of limitation can be decided only after the completion of the trial.

5. On the side of the petitioners, it is stated that the respondent filed a written statement on 22.03.2005 questioning the title of the petitioners and only based on that averment, the petitioners have come forward with this revision petition to amend the plaint to implead the prayer of declaration of title. It is stated that the limitation period for declaration of title is 12 years and the prayer is not barred by limitation as per Article 65 of Limitation Act.

6. On the side of the first respondent, it is stated that the suit was filed on 08.09.2003 for delivery of possession and for arrears of rent. The first respondent has filed his written statement in the year 2005 stating that the first respondent purchased the property in the year 1980 and the first respondent put up the super structure and the first respondent is paying E.B. Charges and property tax and that the revenue records stand in the name of the first respondent and that the patta was transferred in the name of the first respondent and that the first respondent is in possession of the property for the past 20 years and is residing in that suit property. It is stated that when the petitioners filed a petition to declare the 4th plaintiff as major, they have not chosen to include this amendment in that petition, and that only after 7 ½ years, this petition is filed and that the delay is not explained and that under Article 3 of the Limitation Act, the limitation for the prayer sought for is only 3 years and that the prayer sought for is time barred.

7. The learned counsel appearing for the respondent relied on the Judgment passed by the Hon'ble Supreme Court in the case of **Shiv Gopal Sah @ Shiv Gopal Sahu v. Sita Ram Saraugi and others** reported in **(2007) 4 MLJ 378 (SC)**, which reads as follows:

"11. We have gone through the amendment application carefully where we do not find any explanation whatsoever for this towering delay. We would expect some explanation atleast regarding the delay since the delay was very substantial. The whole amendment application, when carefully scanned, does not show any explanation whatsoever. This negligent complacency on the part of the plaintiffs would not permit them to amend the plaint, more particularly when the claim has, apparently,



become barred by time."

8. The learned counsel appearing for the respondent relied on the Judgment passed by the Hon'ble Supreme Court in the case of **Revajeetu Builders & Developers v. Narayanaswamy & Sons and others** reported in **(2009) 8 MLJ 907 (SC)**, which reads as follows:

"Courts have very wide discretion in matter of amendment of pleadings but Court's powers must be exercised judiciously and with great care."

9. On the side of the respondent, it is stated that the prayer is barred by limitation. In support of his contention, the Judgment passed by the Hon'ble Supreme Court in the case of **Revathy and others v. Savarimuthu** reported in **(2011) 7 MLJ 1177**, is cited.

10. It is seen that the suit is filed in the year 2003 and the written statement was filed in the year 2005. The petitioners filed I.A. petition in the year 2013. Article 58 of the Limitation Act reads as follows:

Description of suit	Period of limitation	Time from which period begins to run
58. To obtain any other declaration	Three years	When the right to sue first accrues.

11. The Article 65 of the Limitation Act, reads as follows:

Description of suit	Period of limitation	Time from which period begins to run
65. For possession of immovable property or any interest therein based on title.	Twelve years	When the possession of the defendant becomes adverse to the plaintiff.

12. Article 58 of the Limitation Act deals with general question of declaration whereas the Article 65 of the Limitation Act deals with specific question of declaration of title. It is true that the petitioners failed to include this amendment at the time of the filing of earlier amendment petition, When the fourth plaintiff was declared as major. It takes 7 ½ years to file this petition. However, a reasonable opportunity for the petitioners is to be given in the interest of justice. Hence, this Court deems it fit to allow this revision petition on condition of payment of cost of Rs.2,000/- (Rupees Two Thousand only) on or before 18.03.2019 to the respondent counsel. Accordingly, this Civil Revision Petition is allowed by setting aside the order passed in I.A.No.1210 of 2013 in O.S.No.237 of 2003 dated 03.12.2014 on the file of the learned District Munsif, Musiri. Consequently, M.P.(MD)No.1 of 2015 is closed.



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13. For reporting compliance, post on 19.03.2019.

Sd/-

Assistant Registrar (CS II)

// True Copy //

Sub Assistant Registrar (CS)

To
The District Munsif, Musiri.

+1cc to Mr.K.GOVINDARAJAN, Advocate, SR.No. 53691

C.R.P. (PD) (MD) No. 661 of 2015
11.03.2019

MRN
KK/SAR-/15.03.2019/4P-3C