



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 16.09.2019
CORAM:

THE HONOURABLE MR.JUSTICE **KRISHNAN RAMASAMY**

WEB COPY

C.R.P(MD)No.1516 of 2015 and
MP(MD).No.1 of 2015

- 1.Rajeswari (died)
- 2.Subbulakshmi Natanam
- 3.Bhuvaneswari
- 4.Venkatesh
- 5.Chandramouli
- 6.Sankaran

(R3 to R6 are brought on record as LR's of deceased 1st petitioner, vide Court order dated 04.09.2019 made in CMP.No. 5408/18 in CRP.No.1516/2015 by KRJ)

... Petitioners/Petitioners/
Plaintiffs

Vs.

1. Ganesan
2. Kumar

... Respondents/Respondents/Defendants

3. Lakshminarayan

... 3rd Respondent/Petitioner/4th Plaintiff

PRAYER: This Civil Revision Petition is filed under Article 227 of Constitution of India against the fair and decreetal order passed in I.A.No. 40 2014 in O.S.No. 2017/1996 dated 13.03.2015 on the file of Principal District Munsif Court, Trichy.

For Petitioner	: Mr.T.S.R. Venkataramana
For R1	: Mr. P. Thiyagarajan
For R2	: Mr. R. Rajagopal
For R3	: Mr. S. Prithiviraj

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order passed in I.A.No. 40 2014 in O.S.No. 2017/1996, dated 13.03.2015 on the file of Principal District Munsif Court, Trichy.

2. The above application was filed to amend the prayer. The petitioner sought to add the following relief in the prayer portion of the plaint after paragraph No.(a):



"(b) as a consequential relief directing the defendants 2 to 4 to deliver possession of the suit properties to the plaintiffs."

3. After hearing both the parties, the Court below dismissed the application for amendment stating that the prayer needs to be valued and that is not valued properly. The relevant portion of the order of the Court below is as follows:

"8. Conversely respondent counsel has contended that consequential relief substance has to be looked into. We have to look spirit of the Section 25 (d) of Tamil Nadu Court Fees Act. On cursory reading of Section 25(d) of Tamil Nadu Court Fees Act makes clear that if the subject matter is incapable of value we should adopt notional value. But Subject matter in this case is immovable property. Recovery of possession sought for with regard to immovable property. The cited case 2002(3) CTC Page 154 we have to look substance of the relief sought for in the proposed amendment. Though this proposed amendment is consequential relief this relief is pivot around the immovable property. Admittedly, the property is situated in the Butterworth Street. It is a prime area of the Tiruchirapalli City Corporation. So recovery of possession cannot be sought under the pretext of consequential relief. They ought to have value this property under Section 30 of Tamil Nadu Court Fees Act or either the 25(b) of Tamil Nadu Court Fees Act (Suit Valuation Act). Learned petitioner counsel has quoted Alagappa Chettiar case dated 19.06.2013. But that factual aspect is distinguished from factual aspects involved in the present case. In the Alagappa Chettiar case principal filed a suit declaring the sale deed executed by the power agent is null and void, because it is a fraudulent document. It will not bind them. It is not for recovery of possession. Further Court should ensure that government should not lose its revenue owing to the astuteness of plaintiff in drafting plaint for substance relief. This Court read proposed amendment carefully in order to curb the attitude of plaintiff to pay nominal fee for substance relief. So I am of the considered view that the Alagappa Chettiar case is not squarely applicable to the case on hand. So I cannot find any merit in this case. Petitioner fails to prove his claim. Hence, this Court declines to allow this application."



4. The learned counsel appearing for the revision petitioner contended that the Court below should not have rejected the application for amendment on the ground that the prayer was not valued properly. According to him, the Court below should have allowed the amendment and after carrying out the amendment, if at all they found any deficit in payment of Court fee, the Registry of Court below should have issued an appropriate slip for payment of Court fee. Without considering the settled proposition of law, the Court below summarily rejected the application for amendment. Therefore, he pleaded before this Court to allow the Civil Revision Petition. After amendment is carried out, the lower Court may be permitted to issue a proper notice to the plaintiff if at all they found any deficit in payment of Court fee.

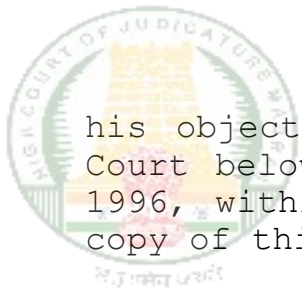
5. The learned counsel appearing for the first respondent / second defendant would contend that, the amendment petition may be allowed subject to making objections by way of additional Written Statement. Further, he contended that the first defendant passed away long back and the date of death of the first defendant is not known. The present suit was filed in the year 1996. Therefore, Section 5 of the Limitation Act is applicable.

6. The learned counsel for the revision petitioner contended that the first defendant has not taken a plea of limitations and therefore, at present, he cannot be allowed to raise this issue. On the other hand, the learned counsel appearing for the 1st respondent / 2nd defendant would contend that since the present amendment application has been filed by the revision petitioner, he is entitled to take this issue of limitation.

7. I have heard the learned counsel appearing on either side and peruse the materials available on record.

8. The revision petitioner has filed I.A.No. 40 of 2014, before the Principal District Munsif Court, Thiruchirappalli, for the purpose of amending the prayer. The Court below has dismissed the said application holding that the prayer was not properly valued. Further, without allowing the amendment petition, the Court should not have come to the conclusion with regard to the valuation of the prayers. The counsel appearing for the first respondent also agreed for the settled proposition of law. Therefore, this Court is inclined to set aside the order passed by the Court below and allow the application in I.A.No. 40 of 2014 permitting to amend the prayer and accordingly, it is ordered.

9. The Registry of the Court below is directed to issue an appropriate notice if at all there is any deficit in payment of Court Fee, after the amendment of the prayer. Further, this Court also permit the first respondent / second defendant to file an additional Written Statement, wherein he is permitted to raise all



his objections. Since the present suit is of the year 1996, the Court below is directed to dispose of the suit in O.S.No. 2017 of 1996, within a period of six months from the date of receipt of a copy of this order.

10. In the result, the Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

/TRUE COPY/

Sub Assistant Registrar

To

The Principal District Munsif Court, Trichy.

+1 CC to M/s.P.THIAGARAJAN, Advocate (SR-86868[F] dated 16/09/2019)

+1 CC to M/s.R.RAJAGOPAL, Advocate (SR-87390[F] dated 18/09/2019)

+1 CC to M/s.T.S.R. VENKAT RAMANA, Advocate (SR-86841[F] dated 16/09/2019)

C.R.P(MD)No.1516 of 2015 and
MP(MD) .No.1 of 2015
16.09.2019

trp
JM/18.09.2019/4P/5C