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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.No. 2910 of 2018

and

C.M.P.No.17010 of 2018

Partheeban

...Petitioner/Respondent/
Defendant

Vs.

1. Selvi

2. Venkatesa Perumal

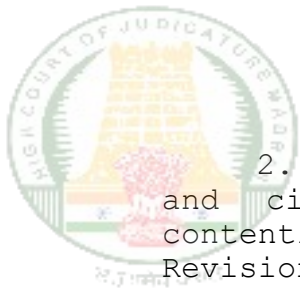
...Respondents/Petitioners/
Plaintiffs

Prayer: Petition filed under Article 227 of the Constitution of India, against fair and decreetal order in I.A.No.1228 of 2017 in O.S.No.155 of 2013 dated 09.03.2018 on the file of the District Munsif, Polur, Thiruvannamalai District.

For Petitioner : Mr.K.V.Sajeev Kumar

ORDER

The defendant in O.S.No.155 of 2013 has come up with this Civil Revision Petition challenging an order allowing an amendment application filed by the plaintiffs in I.A.No.1228 of 2017, seeking to include a prayer for mandatory injunction. The suit was laid for a permanent injunction restraining the defendant from interfering with the plaintiffs' right to irrigate his land through the underground pipe line passing through the defendant's land from the common well. Along with the suit, an application for appointment of Advocate Commissioner was made and the Advocate Commissioner filed a Report stating that the pipe line was damaged to the extent of 20 feet and was connected with hose pipe. The defendant who filed a written statement on the same date did not file any objections to the Commissioner's report. On 17.11.2017, the plaintiffs came up with this application seeking an amendment to the plaint, claiming that the defendant had damaged the pipeline to an extent of 540 feet during April 2015, therefore, the plaintiffs sought to include the relief of mandatory injunction for relaying the pipeline. This application was opposed by the defendant on the primary ground that the application itself is barred as the prayer sought to be introduced by way of amendment is barred by limitation.



2. The learned trial judge upon consideration of the facts and circumstances of the case, rejected the defendant's contentions and allowed the application. Hence, the present Revision.

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3. Heard, Mr.K.V.Sajeev Kumar, learned counsel appearing for the petitioner. Though notice have been served on the respondents, none appeared either in person or through counsel.

4. Mr.K.V.Sajeev kumar, learned counsel appearing for the petitioner would vehemently contend that the trial Court was not right in allowing the application for amendment, more so, when the relief itself is barred by limitation. He would also submit that the Commissioner has found as of fact that there is a damage to the pipeline even in the year 2013 and the plaintiffs having not taken steps for nearly four years, cannot now seek the relief of mandatory injunction.

5. I am unable to accept the contentions of the learned counsel for the petitioner. The suit was laid for permanent injunction regarding a pipeline which was in existence. A Commissioner was appointed. He inspected the suit properties and found that the pipeline is damaged to a length of 20 feet. The exact location of the damage was also pointed out by the Commissioner in his plan. While so, the plaintiffs have come out with an application for amendment contending that the defendant damaged the remaining part of 540 feet of the pipe line during April 2015. Though this application was opposed on the ground of limitation. A specific allegation has been made to the effect that the damage to a length of 540 feet was caused during April 2015 and an application for amendment has been filed some time in November 2017, that is well within a period of three years available for a party to seek the relief of mandatory injunction.

6. Therefore, prima facie, on the allegations made, it appears that the prayer for mandatory injunction is well within time. If it is the case of the defendants that they have removed the pipeline much earlier and therefore the prayer sought for is barred by limitation, it is for them to establish that they have removed the pipeline much earlier by adducing evidence at the time of trial, the amendment application cannot be dismissed on the ground that the proposed prayer would be barred by limitation.

7. I am therefore of the considered opinion that the trial Court was justified in allowing the application, more so, when the relief that was sought to be introduced by the amendment appears to be prima facie within the time allowed under the Limitation Act. Hence the Civil Revision Petition fails and was



accordingly dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

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Assistant Registrar

//True Copy//

Sub Assistant Registrar

To:-

The learned District Munsif,
Polur, Thiruvannamalai District.

+1cc to Mr.K.V.Sanjeev Kumar, Advocate, S.R.No.27438

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GP(CO)
RV(21/10/2020)