

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2020

CORAM

THE HON'BLE MR.JUSTICE D. KRISHNAKUMAR

**C.R.P.(PD) No.3345 of 2018
and C.M.P.No.18975 of 2018**

1. Ramu
2. Shanthakumari .. Petitioners/Plaintiffs

Vs.

1. Dakshayani Ammal
2. Sivakumar
3. Udhayarasu
4. The Assistant Engineer,
T.N.E.B.,
Manapakkam Village, Porur Post,
Mangadu Firka, Sriperumbudur Taluk,
Chennai - 116.
5. Ponnammal
6. Easwari .. Respondents/Defendants

Prayer: The Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decretal order dated 23.04.2018 in I.A.No.196 of 2018 in O.S.No.13 of 2011 on the file of the Subordinate Judge, Kancheepuram.

For Petitioner : Mr.R.Karthikeyan
For Respondent No.3 : Ms.C.Harini

ORDER

The revision petitioner has filed a suit in O.S.No.13 of 2011 on the file of Subordinate Court, Kancheepuram, originally for permanent injunction and subsequently amended for declaration. In the said suit, written statement was filed by the respondents/defendants and thereafter, the petitioner has filed an application in I.A.No.196 of 2018 under Order VI Rule 17 of C.P.C. According to the petitioner, the suit was filed for declaration of title and recovery of possession. The petitioner has filed the present application to amend the pleadings as well as amending the prayer in the suit. According to the petitioner, there is mis-description of S.No.30/6. Subsequently, the vendor of the respondent informed that survey number is wrongly mentioned as S.No.30/6 instead of 66/4. Further, insofar as amendment of the prayer is concerned, mandatory injunction and also declaration of sale deed, dated 1.6.2001 and 9.7.2001 executed in favour of the third defendant is null and void. The trial Court erroneously dismissed the said application on the ground that the said application is barred by limitation. Challenging the said order, dated 23.04.2018, the petitioner has preferred the instant Civil Revision petition before this Court.

2 According to the learned counsel appearing for the petitioner, insofar as the amendment of the pleadings is concerned, the petitioner is not aware of it and subsequently came to know when the communication received

from the vendor of the respondent. Therefore, the petitioner has filed the present application to amend the pleadings to correct the survey number which has been wrongly mentioned in the plaint. The petitioner had the knowledge about the construction of building in the suit property only at the time of filing the written statement. Therefore, the instant application has been filed within the limitation period. Insofar as the other prayer viz., execution of sale deed, dated 1.6.2001 and 9.7.2001 executed in favour of the third defendant is null and void, said plea also within a three years period of limitation. Therefore, the Court below erroneously dismissed the said application and the same is liable to be set aside.

3. The learned counsel appearing for the respondents strongly objected the contention of the petitioner. According to the learned counsel appearing for the respondents, the application has been filed by the petitioner after a lapse of 17 years to amend the prayer as well as pleadings in the plaint. The Court below after hearing both parties, passed the reasoned order. Therefore, there is no warrant to interfere with the order of the Court below.

4. Heard the learned counsel appearing for the petitioner, learned counsel appearing for the respondents and perused the materials available on record.

5. The Court below after hearing both parties dismissed the application by holding that the application has been filed after a lapse of 17 years. Firstly, the petitioner has filed an application to amend the prayer for mandatory injunction are concerned, the respondents have filed additional written statement on 6.2.2014 wherein it has been specifically stated that the defendants have already availed electricity service connection and also in lawful possession and enjoyment of the suit property. The instant application filed by the petitioner is, on 12.2.2018. Therefore, the record itself speaks that the application has been filed beyond the limitation period of three years. Therefore, amending the prayer for mandatory injunction is barred by limitation. The second plea of the petitioner for amending prayer that the execution of sale deed, in favour of the third defendant is null and void is concerned, said plea also within a three years period of limitation. The sale deeds are of the year 2001 whereas the instant application has been filed in the year 2018. There is no explanation for the delay of 17 years to file the instant application to amend the prayer. Therefore, the contention of the petitioner is unsustainable and the Court below has rightly rejected the application by holding that the application is barred by limitation..

6. Insofar as the amendment of the pleadings in paragraph 12(A) (1) is concerned, the reason stated by the petitioner is acceptable. Therefore, this court is of the view that the respondents/defendants cannot

have any serious objections for allowing such plea, for the reason that the vendor of the respondent has sent a communication to the petitioner and the respondents themselves admitted that there is mistake in survey number. Originally, the vendor of the respondent admitted the mistake in mentioning survey number in the partition deed. Therefore, the Court below has lost sight to consider the said aspect and rejected the plea of the petitioner and the same is liable to be set aside. However, it is always open to the respondents to make any objection during trial of the suit.

7. Considering the facts and circumstances of the case and the discussion as stated above, insofar as the prayer for amendment of pleadings in paragraph 12(A) (1) is concerned, the impugned order passed by the Court below is set aside. The Court below is directed to permit the petitioner to amend the pleadings in paragraph 12(A) (1). Insofar as the other relief sought for by the petitioner is concerned, the Court below has passed the reasoned order and therefore, there is no warrant to interfere with the order passed by the trial Court.

8. In the result, the Civil revision petition is partly allowed. The trial Court is directed to dispose of the suit in O.S.No.13 of 2011 as expeditiously as possible preferably within a period of six months from the date of receipt of a copy of this order. Both the parties are directed to

Cooperate with the trial Court for early disposal of the suit. No costs.

Consequently, connected miscellaneous petition is closed.

04.03.2020

Speaking/Non Speaking order

Index: Yes/No

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To

The Subordinate Judge, Kancheepuram



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D.KRISHNAKUMAR.J,

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