



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.03.2020

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

C.R.P. (PD) (MD)No.285 of 2020

R.Jeyavelpandian

... Petitioner/Petitioner/Plaintiff
vs.

G.Subramanian

...Respondent/Respondent/Defendant

PRAYER: This Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and executable order dated 10.07.2018 passed in the application in I.A.No.113 of 2018 in O.S.No.166 of 2010 on the file of the District Munsif cum Judicial Magistrate No.I, Usilampatti.

For Petitioner : Mr.J.Bharathan
For Respondent : Mr.EVN.Siva

ORDER

This Civil Revision Petition is filed against the order dated 10.07./2018 passed by the District Munsif Cum Judicial Magistrate No.I, Usilampatti, in I.A.No.113 of 2018 in O.S.No.166 of 2010.

2.The petitioner, who is the plaintiff has filed a suit in O.S.No.166 of 2010 against the respondent/defendant before the District Munsif cum Judicial Magistrate No.I, Usilampatti, for permanent injunction. During the pendency of the said suit, the petitioner has filed an application in I.A.No.113 of 2018 to amend the plaint and the said application was dismissed by the learned Trial Judge. Aggrieved over the same, the present Civil Revision Petition has been filed.

3.The learned counsel appearing for the petitioner submitted that the learned trial Judge has dismissed the said application filed by the petitioner/plaintiff on two grounds. One is delay in latches and another ground is barred by limitation. The learned counsel also relied upon the judgment of the Hon'ble Supreme Court in the case of **L.C.HANUMANTHAPPA(SINCE DEAD) V. H.B.SHIVAKUMAR** reported in **(2016) 1 SUPREME COURT CASES 332**, which is not applicable to the facts of the present case. Therefore, the order of the trial Court is liable to be set aside.

4.The learned counsel for the respondent would submit that though the petitioner has filed the suit for bare injunction in the year 2010, he filed the written statement in the year 2016 and the trial has also commenced in the year 2015. The amendment application was filed only after completion of the trial and the matter was



posted for arguments. Therefore, the trial Court has rightly observed and dismissed the said application as the claim is barred by limitation. Hence, the order of the trial Court is just and fair and no interference is called for by this Court.

5. Heard the learned counsel for the petitioner and the learned counsel for the respondent and perused the materials available on record.

6. Admittedly, the suit in O.S.No.166 of 2010 was filed by the petitioner before the learned District Munsif cum Judicial Magistrate No.I, Usilampatti, in the year 2010 and the respondent has filed a written statement stoutly denying the title of the petitioner. Though the petitioner has not taken any steps from the year 2011-2015, the trial also commenced and after completion of the trial, the suit was posted for arguments in the year 2018 and at that time, the petitioner has filed an application in I.A.No.113 of 2018 for amendment. Even though the respondent has denied the petitioner's title in the pleadings by way of filing a written statement, the petitioner has not take any steps and if at all he wanted to establish his title before 2015 and during trial, he has not take any steps. Though the citation referred to by the learned counsel for the petitioner, wherein, the amendment petition was allowed, in this case, from the date of denial of title by way of filing the written statement within three years that factum cannot be disputed. Therefore, the suit was filed in the year 2010 and the written statement was filed in the year 2011 and the trial has commenced in the year 2015. When the matter is posted for argument, the petitioner has come forward with the petition to amend the prayer and this Court does not find any perversity in the order passed by the trial Court. As the citation referred to by the learned counsel for the petitioner is not applicable to the facts of the present case, this Court finds that there is enormous delay to take a decision to amend the plaint, even though in the year 2011 itself, the title of the plaintiff has been stoutly denied by the respondent.

7. Under these circumstances, this Court finds no merit in the revision and the same is liable to be dismissed. Accordingly, this Civil Revision Petition is dismissed. No costs.

Sd/-

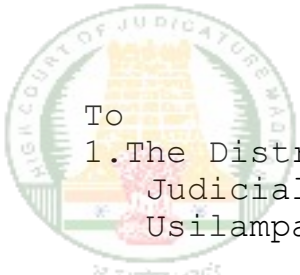
Assistant Registrar (AS)

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Sub Assistant Registrar(CS)

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To

1.The District Munsif cum
Judicial Magistrate No.I,
Usilampatti.

2.The Record Keeper, (2Copies)
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.T.R.JEYAPALAM, Advocate (SR-10141[F] 05/03/2020)
+1 CC to M/s.E.V.N.SIVA, Advocate (SR-10106[F] dated 04/03/2020)

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SMA/23/03/2020/3P/6C