



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.08.2020

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THE HON'BLE MR.JUSTICE **S.S.SUNDAR**

C.R.P. (PD) (MD)No.605 of 2020

and

C.M.P. (MD)No.3949 of 2020

S.V.Jawaharlal Nehru

: Petitioner

.. Vs ..

V.Raja

: Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order passed in I.A.No.1 of 2019 in O.S.No.99 of 2016, dated 20.02.2020, on the file of the Principal Subordinate Court, Tirunelveli.

For Petitioner : Mr.S.Meenakshi Sundaram
Senior Counsel
for Mr.M.Sengu Vijay

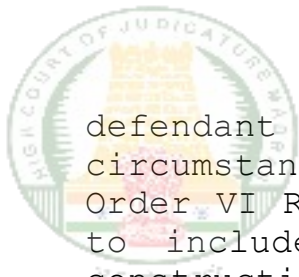
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ORDER

This Civil Revision is directed against the order passed by the learned Principal Subordinate Judge, Tirunelveli, in I.A.No.1 of 2019 in O.S.No.99 of 2016, dated 20.02.2020.

2.The respondent in this revision petition filed a suit in O.S.No.99 of 2016 for a declaration that the suit second schedule property is the common property of both plaintiff and defendant and for consequential injunction restraining the revision petitioner herein from putting up any construction in the suit second schedule property and not to interfere with the common enjoyment of the suit second schedule property by the plaintiff. The suit is also for mandatory injunction to restore the Well in the suit second schedule.

3.During the pendency of the suit, an Advocate Commissioner was appointed to note down the physical features of the suit property. In the interim report of Advocate Commissioner, that was filed immediately after the appointment of Advocate Commissioner, it is seen that the defendant has closed the wall preventing access to the plaintiff to the suit second schedule. In the final report that was subsequently filed, the Advocate Commissioner has noted certain constructions put up by the



defendant in the suit second schedule property. It is in the said circumstances, the respondent/plaintiff filed an application under Order VI Rule 17 CPC in I.A.No.01 of 2019 for amendment of plaint to include the prayer for mandatory injunction to remove the construction put up by the defendant in the suit second schedule property.

4.The said application was seriously opposed by the defendant/revision petitioner on the ground that the prayer for mandatory injunction is barred by limitation, as the construction was put up three years prior to the petition for amendment. The learned Principal Subordinate Judge, Tirunelveli, after considering the facts and circumstances of the case, found that the amendment is necessitated and that the question whether the new relief introduced by way of amendment is barred by limitation or not can be decided along with other issues at the time of trial. With the said observation, the petition for amendment was allowed, however, on condition that the plaintiff/respondent should pay a sum of Rs.2,000/- to the defendant/revision petitioner by way of cost. Upon the cost being paid, the petition was allowed by subsequent order, dated 20.02.2020. Aggrieved by the same, the Civil Revision Petition is filed by the defendant in the suit.

5.Mr.S.Meenakshi Sundaram, learned Senior Counsel appearing for the revision petitioner submitted that the trial Court ought to have held that the relief of mandatory injunction is barred by limitation and that the amendment introducing new relief, which is time barred, cannot be allowed. The learned Senior Counsel further contended that the amendment petition is filed belatedly, when the trial was nearing completion and that the plaintiff cannot be permitted to raise a plea or relief, which is time barred. The learned Senior Counsel pointed out from the written statement that the construction in the suit second schedule was pleaded by the plaintiff even in the written statement, that was filed in September'2016 and that therefore, the relief for mandatory injunction is hopelessly barred by limitation. He further submitted that the lower Court ought to have decided the application on the basis of admitted facts as borne out from the records and the revision petitioner is put to lot of inconvenience by permitting the plaintiff to introduce a new prayer, which is hopelessly barred by limitation.

6.This Court carefully considered the submissions of the learned Senior Counsel for the revision petitioner. It will not be appropriate to consider the question of limitation purely on the basis of the stand taken by the defendant/revision petitioner in the written statement about the construction. The Advocate General submitted his interim report that was filed immediately



after his appointment, has only mentioned that some change in flooring is found in the suit second schedule. The Advocate Commissioner has not noted any construction, as such in the suit second schedule. It was only in the final report, that was filed in 2017, the Advocate Commissioner has noted the construction, that was put up by the defendant/revision petitioner in the suit second schedule property.

7.In such circumstances, it will not be appropriate to decide the question of limitation before trial. The issue whether the new relief of mandatory injunction is barred by limitation cannot be decided on the basis of mere averments in the written statement. The plaintiff should be given an opportunity to prove that the prayer for mandatory injunction is within time. Since the trial Court has reserved the right to the revision petitioner to raise the question of limitation, this Court is of the view that no prejudice is caused to the revision petitioner. The petition for amendment to introduce a new prayer for mandatory injunction is warranted in view of the specific plea in the plaint. The question whether the relief of mandatory injunction, which was introduced by way of amendment, is within time should be decided on the basis of evidence, as the question of limitation in this case, is a mixed question of fact and law.

8.For the reasons above stated, this Courts finds no merit in the revision petition. Accordingly, this Civil Revision Petition is dismissed. The order passed by the learned Principal Subordinate Judge, Tirunelveli, in I.A.No.01 of 2019 in O.S.No.99 of 2016, dated 20.02.2020, is confirmed. The revision petitioner is at liberty to file additional written statement. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS)

// True Copy //

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Sub Assistant Registrar(CS)

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To

1.The Principal Subordinate Judge, Tirunelveli.



2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court, Madurai.(2 copies)

+1 CC to M/s.M. SENGU VIJAY, Advocate (SR-14942[F] dated
26/08/2020)

C.R.P.(PD)(MD)No.605 of 2020
25.08.2020

PM(CO)
TR(02.09.2020) 4P 5C