



WEB COPY

C.R.P. (PD) (MD) No. 947 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.07.2020

CORAM

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

C.R.P. (PD) (MD) No. 947 of 2017

and

C.M.P. (MD) No. 4175 of 2017

S. Muthiah (Died)

1. Pappathi

2. Govindaraj : Petitioners/Respondents/Defendants

.. Vs ..

1. G. Subbiah (Died)

2. P. V. A. Suba

3. Thilakavathi

4. Sujatha

5. S. Damodharan : Respondents/Petitioners/Plaintiffs

(Respondents 3 to 5 were brought on record as legal representatives of the deceased first respondent, vide order, dated 18.03.2020 in C.M.P. (MD) No. 636 of 2020)

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for the records pertaining to the fair and decreetal order, dated 20.01.2016 in I.A. No. 926 of 2016 in O.S. No. 437 of 2009 on the file of the Principal District Munsif Court, Dindigul and set aside the same.

For Petitioners : Mr. H. Lakshmi Shankar

For R1 : Died

For R2 to R5 : Mr. D. Venkatesh

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### **ORDER**

This Civil Revision Petition is preferred as against the order allowing the petition for amendment in I.A. No. 926 of 2016 in O.S. No. 437 of 2009, dated 20.01.2016.



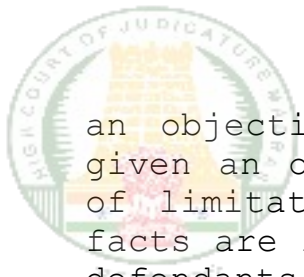
2. The brief facts that are necessary for the disposal of this Civil Revision Petition are as follows:

3. The respondents 1 and 2 herein filed a suit in O.S.No.437 of 2009 on the file of the Principal District Munsif Court, Dindigul, for declaration of their title and consequential injunction in respect of the suit property. The suit was filed in the year 2009 and an application for appointment of Commissioner was also filed. Ultimately, a Commissioner was appointed to note down the physical features in the suit property and he has also filed a report on 28.09.2016. After the filing of the Commissioner's report, the plaintiffs preferred an application in I.A.No.926 of 2016 in O.S.No.437 of 2009 for amendment of plaint to include a new prayer of mandatory injunction to remove the construction put up by the revision petitioners in the suit property. The said application was allowed by the trial Court. Aggrieved by the same, the present Civil Revision Petition is filed.

4. The learned Counsel for the revision petitioners submitted that the new prayer, which is sought to be introduced by way of amendment is barred by limitation. The learned Counsel further pointed out that even in the plaint, the respondents/plaintiffs have admitted that the defendants are trying to put up a construction. He further stated that though the construction was made immediately after the suit was filed, no steps were taken to include the prayer for mandatory injunction. He further pointed out that in their affidavit, they pleaded that they came to know about the construction only after the Commissioner visited the suit property in 2016.

5. It is no doubt true that the respondents have not specifically pleaded in their petition about the date of construction put up by the revision petitioners. Merely because, the plaintiffs have stated in their plaint that the defendants made an attempt to put up some construction, it cannot be presumed that the construction was immediately after the suit was filed in 2009. The question of limitation in the present case is a factual issue and cannot be considered as a legal issue, which can be taken from the facts admitted. The question whether the new relief of mandatory injunction is barred by limitation or not has to be considered only at the time of trial by giving an opportunity to both sides.

6. Hence, this Court is of the view that the order allowing the amendment petition need not be interfered with, even though it is contended that the lower Court has not considered the relevant facts and issues, which are necessary and germane to decide the amendment petition. When a question of limitation is raised, as



an objection to any amendment petition, both parties should be given an opportunity to prove their respective case on the issue of limitation at the time of trial, where disputed question of facts are involved. In such circumstances, leaving it open to the defendants to raise a plead regarding limitation by filing additional written statement and with a direction that the same should be considered by the lower Court at the time of trial, the present Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Records)

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/ /2020

Sub Assistant Registrar (CS)

cmr

To

The Principal District Munsif, Dindigul.

+1 CC to M/s.H.LAKSHMI SHANKAR, Advocate ( SR-13204[F] dated 23/07/2020 )

C.R.P. (PD) (MD) No. 947 of 2017  
23.07.2020

sgs (CO)

TR(29.07.2020) 3P 3C