

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.04.2021

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

**C.R.P(PD).No.211 of 2019
and
C.M.P.No.1671 of 2019**

1.P.Sekar
2.Ramesh
3.Suresh

...Petitioners

Vs

1.Rajamanickam
2.Saminathan
3.Gopal @ Rajagopal
4.Manikandan
5.T.Sekar
6.Sundari
7.Sumathi
8.Pachiammal

...Respondents

Revision Petition filed under Article 227 of the Constitution of India
to set aside the order dated 20.11.2018 made in I.A.No.564 of 2018 in
O.S.No.894 of 2009 on the file of the I Additional District Munsif, Salem.

For Petitioner : Mr.T.S.Vijaya Raghavan

For Respondents
R1 to R3 : M/s.S.Sasikala

ORDER

Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the respondents.

The defendants 3 to 5 in the suit are the revision petitioners herein. The suit in O.S.No.894 of 2009 had been filed and is now pending before the I Additional District Munsif Court at Salem by the respondents 1 to 3 herein seeking a judgment and decree in the nature of permanent injunction restraining the defendants from interfering with peaceful possession and enjoyment of the suit property. The suit property is a land and house at Door No.101/59A in Sivadhapuram Village, Salem Taluk in Salem District. Written statement had been filed by the defendants, which is dated 19.10.2011. They had stated that the plaintiffs are not entitled to the property. In effect, in the written statement, the title of the plaintiffs was

denied. Thereafter, an application in I.A.No.564 of 2015 was filed by the plaintiffs on 30.03.2015. By way of this application which had been filed under Order VI Rule 17 of Code of Civil Procedure, the plaintiffs sought to amend the relief claimed by including the relief of declaration, namely, to declare that the plaintiffs are the absolute owners of the suit property. A Counter had been filed in the said application again denying the title of the plaintiffs to the property and also stating that the application to amend the plaint seeking the relief of declaration is time barred. This application came to be allowed by the learned Judge which order is now under question in the Civil Revision Petition.

3.The learned Judge had stated that the amendment can be allowed and had relied upon the decision of the Hon'ble Supreme Court in the case of ***Sampath Kumar vs. Ayyakannu [2002 Supp. (2) SCR 397]***. In the said case, the Hon'ble Supreme Court had relied on an earlier judgment in ***AIR (1960) SC 335 [Mst.Rukhmabai vs. Lala Laxminarayan and others]***, wherein a dictum was laid that an amendment can be allowed and the period of delay in filing an application for amendment should be decided

not by calculating the period from the date of institution of the suit but by reference to the stage to which the hearing in the suit has proceeded.

4.However, reference can also be had to the decision in the case of ***Revajeetu Builders and Developers Vs. Narayanswamy and Sons and others [(2009) 10 SCC 84]***, wherein, the Hon'ble supreme Court had also held that normally an amendment cannot be denied but if a fresh suit on the amended claim would be barred by limitation on the date of application, then the amendment will have to be viewed with circumspection.

5.In the present case, in the written statement filed in the year 2011, the title of the plaintiffs had been denied. The plaintiffs should have taken that date as the starting period for claiming any relief with respect to declaration of title and should have filed an application within a period of three years. They had chosen to file an application only on 30.03.2015, after more than four years. That particular relief is clearly barred by limitation.

6.I am not in agreement with the order passed by the learned Judge and therefore, it requires interference. The Civil Revision Petition is therefore allowed and the order in question is set aside and I.A.No.564 of 2015 is dismissed. A direction is given to the learned Trial Judge since the suit is of the year 2009, to proceed further and bestow personal attention and dispose of the suit at the earliest. No order as to costs. Consequently, connected miscellaneous petition is closed.

08.04.2021

cse
Index: Yes/No
Internet: Yes/No

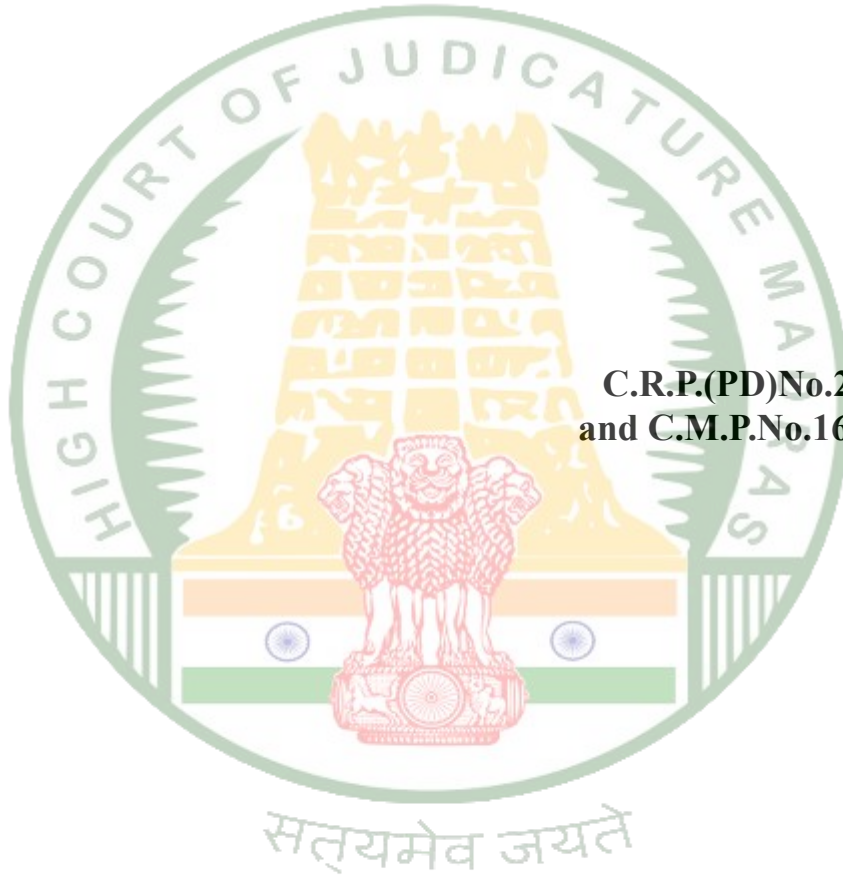
To

The I Additional District Munsif,
Salem.

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C.V.KARTHIKEYAN, J,

cse



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