

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.02.2021

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.PD.No.1031 of 2015 and
MP.No.1 of 2015

K.Ramanathan

..Petitioner

Vs.

1.Dhanakodi

2.Vasanthan

3.Selvamani

..Respondents

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India against the order dated 17.09.2014 passed in IA.No.82 of 2013 in OS.No.1322 of 2006 on the file of II Additional District Munsif Court, Salem.

For Petitioner : Mr.P.Jagadeesan

For Respondents

For R1 & 2 : Mr.S.Saravanakumar

R3 : Notice served

ORDER

This Civil Revision Petition is filed against the order dated 17.09.2014 passed in IA.No.82 of 2013 in OS.No.1322 of 2006 on the file of II Additional District Munsif Court, Salem thereby dismissing the petition seeking amendment of plaint.

2. The petitioner is the plaintiff. The respondents are the defendants. The plaintiff filed suit for permanent injunction in respect of 'A' schedule property and also 'B' schedule property. In respect of 'A' schedule property, the defendants had no objection and they conceded that 'A' schedule property belongs to the petitioner. In respect of the 'B' schedule property, the petitioner prayed restraining the defendants from preventing the petitioner from use of AB pathway situated in northern side of the Odai Poramboke land by way of permanent injunction. On 24.01.2007, the defendants filed written statement and stated as follows:

"The Odai does not run South of the 'A' schedule property. The land of the defendant is situate South of the land of the plaintiff ie., suit 'A' schedule property and only South of the said land of these defendants is situate the Odai which runs only in the patta land of these defendants. These defendants only exercise all sors of right, possession, interest and title over the said Odai. Except these defendants, nobody else has got any right, interest or possession over the same."

3. Thereafter, Advocate Commissioner was appointed and as per his report, the defendants have obliterated the Odai and its land, cultivated the land and planted coconut saplings and teak saplings, and they are obstacle for the petitioner's use. Therefore, the

petitioner filed petition for amendment amending the prayer with regard to 'B' schedule property from permanent injunction to mandatory injunction. The court below dismissed the said petition on the ground that the Commissioner has made his first visit to the suit property on 13.12.2008 whereas the petitioner filed present petition to amend the prayer to include the prayer of mandatory injunction, after period of five years. It should have been filed within a period of three years from the date of right to sue occurs with regards to the said relief of mandatory injunction. Therefore, it is barred by limitation.

4. In catena of judgments of this Court as well as the Hon'ble Supreme Court of India, it is held that on the question of limitation, the amendment cannot be denied and it can be agitated at the time of conclusion of trial. Further, the amendment sought for by the petitioner does not change the character of the suit and also no prejudice would be caused to the respondents. Therefore, the order passed by the court below is liable to be set aside.

5. Accordingly, this civil revision petition is allowed and the order dated 17.09.2014 passed in IA.No.82 of 2013 in OS.No.1322 of 2006 on the file of II Additional District Munsif Court, Salem is set

aside. The respondents are permitted to file their additional written statement. The trial court is directed to frame the issue in respect of limitation and decide the suit in accordance with law on merits. Further, considering that the suit is of the year 2006, the trial court is directed to complete the trial within a period of six months from the date of receipt of copy of this order. Consequently, connected miscellaneous petition is closed. No order as to costs.

11.02.2021

Speaking/Non-speaking order
Index : Yes/No
Internet : Yes/No
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To

The II Additional District Munsif Court,
Salem.



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G.K.ILANTHIRAIYAN,J.

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