

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.04.2021

CORAM

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

CRP.PD.No.330 of 2018

and

CMP.No.1810 of 2018

Razack

..Petitioner

Vs.

1.Ameer Basha
2.Abitha
3.Abdul Rahman

..Respondents

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decretal order dated 08.08.2017 made in IA.No.644 of 2017 in OS.No.281 of 2013 on the file of the Principal District Munsif Court, Kallakurichi.

For Petitioner : Mr.R.Kumaravel

For Respondents

For R1 & 2 : Mr.A.Arun Babu

R3 : Notice served

ORDER

This civil revision petition is filed against the fair and decretal order dated 08.08.2017 passed in IA.No.644 of 2017 in OS.No.281 of 2013 on the file of the Principal District Munsif Court, Kallakurichi, thereby allowing the petition to include the prayer of declaration and recovery of possession.

2. The petitioner is the first defendant and the respondents 1 and 2 are the plaintiffs. The respondents 1 and 2 filed suit for permanent injunction in respect of the suit property. While pending the suit, the petitioner trespassed into the suit property and completely damaged the same and modified as their own land. It is also confirmed by the Advocate Commissioner's report and as such the respondents 1 and 2 were constrained to file petition to seeking amendment to include the prayer of declaration and also recovery of possession in respect of the suit property. Therefore, the trial court rightly allowed the petition.

3. The only contention raised by the learned counsel for the petitioner is that the subsequent prayer of declaration is barred by limitation and is directly hit under Article 58 of Limitation Act. He also relied upon the judgment in the case of **L.C.Hanumanthappa Vs.**

H.B.Shivakumar reported in **(2016) 1 SCC 332**, wherein the Hon'ble Supreme Court of India has held as follows:

13. We have heard learned counsel for the parties. It is not disputed that **Article 58** of the **Limitation Act** would apply to the amended plaint inasmuch as it sought to add the relief of declaration of title to the already existing relief for grant of permanent injunction. In **Khatri Hotels Private Limited & Anr. v. Union of India & Anr.**, (2011) 9 SCC 126, this Court while construing **Article 58** of the **Limitation Act** held as follows:-

“**Article 58** of the Schedule to the 1963 Act, which has a bearing on the decision of this appeal, reads as under:

“THE SCHEDULE Period of Limitation [See Section 2(j) and 3]
First Division-Suits Description of suit Period of Time from which period
limitation begins to run * * * Part III- Suits Relating To Declarations * * *

58. To obtain any other Three Years When the right to sue first accrues.
declaration.

Article 120 of the Schedule to the **Limitation Act**, 1908 (for short “the 1908 Act”) which was interpreted in the judgment relied upon by Shri Rohatgi reads as under:

“Description of suit Period of Time from which period begins to
run limitation

120. Suit for which no period Six years When the right to sue accrues.” of limitation is provided elsewhere in this Schedule.

The differences which are discernible from the language of the above reproduced two articles are:

(i) The period of limitation prescribed under [Article 120](#) of the 1908 Act was six years whereas the period of limitation prescribed under the 1963 Act is three years and,

(ii) Under [Article 120](#) of the 1908 Act, the period of limitation commenced when the right to sue accrues. As against this, the period prescribed under [Article 58](#) begins to run when the right to sue first accrues.

[Article 120](#) of the 1908 Act was interpreted by the Judicial Committee in [Bolo v. Koklan](#) [(1929-30) 57 IA 325 : AIR 1930 PC 270] and it was held: (IA p. 331) “There can be no ‘right to sue’ until there is an accrual of the right asserted in the suit and its infringement, or at least a clear and unequivocal threat to infringe that right, by the defendant against whom the suit is instituted.” The same view was reiterated in [Annamalai Chettiar v. Muthukaruppan Chettiar](#) [ILR (1930) 8 Rang 645] and [Gobinda Narayan Singh v. Sham Lal Singh](#) [(1930-31) 58 IA 125].

In [Rukhmabai v. Lala Laxminarayan](#) [AIR 1960 SC 335 : (1960) 2 SCR 253], the three-Judge Bench noticed the earlier judgments and summed up the legal position in the following words: (Rukhmabai case “33. ... The right to sue under [Article 120](#) of the [1908 Act] accrues when the defendant has clearly or unequivocally threatened to infringe the right asserted by the plaintiff in the suit. Every threat by a party to such a right, however ineffective and innocuous it may be, cannot be considered to be a clear and unequivocal threat so as to compel him to file a suit. Whether a particular threat gives rise to a compulsory cause of action depends upon the question whether that threat effectively invades or jeopardizes the said right.” While enacting [Article 58](#) of the 1963 Act, the legislature has designedly made a departure from the language of [Article 120](#) of the 1908 Act. The word “first” has been used

between the words “sue” and “accrued”. This would mean that if a suit is based on multiple causes of action, the period of limitation will begin to run from the date when the right to sue first accrues. To put it differently, successive violation of the right will not give rise to fresh cause and the suit will be liable to be dismissed if it is beyond the period of limitation counted from the day when the right to sue first accrued.”

4. It is seen from the affidavit filed in support of the petition revealed that only in the year 2016, the petitioner trespassed into the property and destroyed the common pathway and included into their property. Therefore, the respondents 1 and 2 filed the petition to include the prayer of declaration within a period of three years. Therefore, the above judgment is not helpful to the case on hand and as such this Court finds no irregularity or infirmity in the order passed by the court below.

5. Accordingly, this civil revision petition is dismissed. Consequently, connected miscellaneous petition is closed. No order as to costs.

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

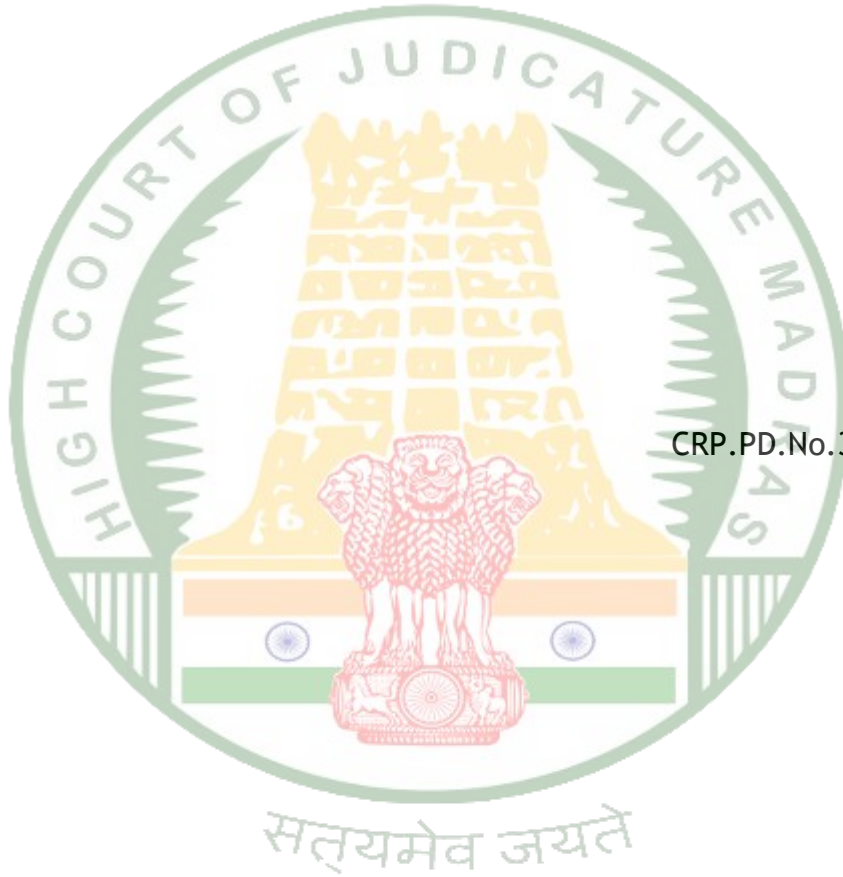
08.04.2021

G.K.ILANTHIRAIYAN,J.

lok

To

The Principal District Munsif Court,
Kallakurichi.



CRP.PD.No.330 of 2018

WEB COPY

08.04.2021