

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.08.2021

CORAM

THE HONOURABLE Mr. JUSTICE G.CHANDRASEKHARAN

CRP. (PD) No.1681 of 2021

and C.M.P. No.12991 of 2021

Periyasamy

... Petitioner

Vs.

Kandasamy

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and final order in I.A. No.2 of 2020 in A.S. No.10 of 2014 on the file of the Subordinate Judge, Rasipuram, dated 11.01.2021.

For Petitioner : Mr. J.Prithivi

For Respondent : No appearance

O R D E R

This petition is filed to set aside the order passed in I.A. No.2 of 2020 in A.S. No.10 of 2014, on the file of Subordinate Judge, Rasipuram.

2. The respondent, as the plaintiff, filed a suit in O.S. No. 5 of 2011 seeking relief of declaration of title over the suit property and for possession.

The petitioner made a counter claim in the suit. The learned trial Judge, after

contest, dismissed the suit on 03.04.2013, allowing the counter claim made by the petitioner. Against the said judgment, the respondent has preferred an appeal in A.S. No.10 of 2014. In the appeal, the respondent filed I.A. No.2 of 2020, seeking amendment of the grounds in the prayer of the appeal stating that while preparing the grounds of appeal, he omitted to seek the relief of dismissing the counter claim made by the petitioner in O.S. No.5 of 2011. The learned trial Judge, after considering the rival submissions, allowed the Interlocutory Application, on payment of costs. Against the said order, the present Civil Revision Petition is preferred.

3. Learned counsel appearing for the petitioner submits that the proposed amendment is barred by limitation. The suit was decreed on 03.04.2013, but the present amendment petition is filed only after seven years i.e. in the year 2020. As per Order 20 Rule 19 (2) CPC, any decree passed in a suit in which a set-off (or counter-claim) is claimed shall be subject to the same provisions in respect of appeal to which it would have been subject if no set-off (or counter-claim) had been claimed. Learned counsel for the petitioner submitted that the proposed amendment seeking to include the prayer of dismissing the counter claim made by the petitioner, is out of time and barred by limitation.

4. This Court considered the submissions made by the learned counsel for the petitioner. Admittedly, the suit filed by the respondent for declaration of

title and recovery of possession was dismissed and the counter claim made by the petitioner on the ground of adverse possession is allowed and the petitioner was declared as the owner of the suit property. The respondent, at the time of filing of appeal suit, should have claimed the relief to set aside the judgment and decree passed in favour of the petitioner while seeking to set aside the judgment and decree in O.S. No.5 of 2011. The same was not done. The main objection raised by the learned counsel for the petitioner is that the proposed amendment is barred by limitation. This Court is of the considered view that the proposed amendment is absolutely necessary for rendering complete and substantial adjudication of the matter. However, the issue with regard to whether the proposed amendment is barred by limitation is kept open to be decided by the learned Subordinate Judge, Rasipuram.

5. In this view of the matter, this Court is not inclined to interfere with the order of the learned Judge and the same is confirmed. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

23.08.2021

Index: Yes / No

Speaking order / Non speaking order
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Copy To:

The Subordinate Judge, Rasipuram.

G.CHANDRASEKHARAN. J.,

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