



WEB COPY



CRP (PD) No. 1745 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **20.12.2021**

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP (PD) No. 1745 of 2021

and

CMP No. 13526 of 2021

Mr. K. John Manikavel ... Petitioner/Petitioner/Plaintiff

Vs

1. D.Jemina Persis

2. Nyana Durai ... Respondents/Respondents/Defendants

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 24.02.2021 passed by the learned District Munsif, Gobichettipalayam, in I.A.No. 1 of 2020 in O.S.No. 26 of 2012 filed by the petitioner/petitioner/plaintiff wherein the petition seeking amendment of the prayer in the plaint was dismissed.

For Petitioner : Mr.G.Ravi Shankar

For Respondents : Mr. C.Ramaraj
for M/s. M.Guru Prasad



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ORDER

Challenge in this Revision is to an order dismissing an application for amendment of the plaint.

2. The plaintiff filed a suit for permanent injunction on 10.01.2012 contending that he had purchased the property from and out of his own earnings in the name of the first defendant and constructed a house by borrowing monies from various financial institutions and banks. Claiming that the defendant is attempting to interfere with the possession of the properties, he came up with the suit.

3. The defendant filed a written statement on 20.06.2012 denying the title of the plaintiff and claiming that the suit for bare injunction without declaration is not maintainable.

4. The suit went for trial and after the completion of the evidence, the plaintiff filed I.A.No. 1 of 2020 seeking to amend the plaint to introduce the prayer declaration of title.



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5. This was resisted by the defendant contending that the relief of declaration itself is time barred since it ought to have been sought for within three years from the date of denial of title and that the application is belated. It was pointed out that the plaintiff will have to show that he could not file the application earlier in point of time despite exercise of due diligence as required under proviso to Order VI Rule 17 of the Code of Civil Procedure. The learned District Munsif, Gobichettipalayam, who heard the application accepted the defence and dismissed the application. Hence, this Civil Revision.

6. Mr.G.Ravi Shankar, learned counsel for the petitioner would vehemently contend that the prayer for declaration can be included at any stage of the suit and therefore, the trial Court was not right in dismissing the application. No doubt true that the Hon'ble Supreme Court has reiterated that application for amendment can be filed any time, but after the introduction of proviso to Order VI Rule 17 of CPC, if a party wants to amend the pleadings, such party will have to show that he or she would not



have been able to seek the amendment earlier in point of time despite exercise of due diligence. It is also settled law that the relief which is barred otherwise by limitation cannot be introduced by way of an amendment.

7. As seen from the records, the defendant had filed the written statement on 20.06.2012 specifically disputing the title of the plaintiff and claiming that a suit for bare injunction without seeking declaration is not maintainable. Despite such contention having been raised in the written statement itself as early as on 20.06.2012, the plaintiff waited till 20.01.2020, to file the application for amendment. Needless to say, the relief of declaration is barred by law on limitation.

8. The perusal of the affidavit filed in support of the application for amendment does not even aver any reason for not making the application earlier in point of time. No attempt had been made by the petitioner to explain as to why he could not file the application earlier in point of time. The mandatory requirement of the proviso has not been satisfied. Hence, the Trial Court was justified in dismissing the application for amendment.



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9. Thus, this Civil Revision fails and accordingly, it is dismissed.

Consequently, connected Miscellaneous Petition is closed. No costs.

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vsg

Index: Yes/No

Speaking order / Non speaking order

To:

1. District Munsif Court, Gobichettipalayam
2. The Section Officer,
VR Section,
Madras High Court, Chennai.



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R.SUBRAMANIAN, J.

Vsg

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