



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **23.12.2021**

CORAM :

THE HONOURABLE MS.JUSTICE **P.T.ASHA**

C.R.P. (MD) No.1031 of 2021

and

C.M.P. (MD) No.5980 of 2021

1.A.Alagar

2.A.Jeevanantham

3.A.Jothi

... Petitioners/Petitioners/Defendants

vs.

R.Gopalakrishnan

... Respondent/Respondent/Plaintiff

PRAYER:- This Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 09.04.2021 in I.A.No.15 of 2021 in O.S.No.71 of 2016 on the file of the learned District Munsif, Melur.

For Petitioners : Mr.K.Chengiz Khan

For Respondent : Mr.M.P.Senthil

ORDER

The defendants are the revision petitioners before this Court. The above Civil Revision Petition is filed challenging the order passed by the learned District Munsif, Melur in I.A.No.15 of 2021 in O.S.No.71 of 2016, in and by which the learned Judge had allowed the amendment petition filed by the plaintiff under Order VI Rule 17 and Section 151 of the Code of Civil Procedure.

2.The brief facts are as follows:-

3.The respondent herein/plaintiff had filed a suit for bare injunction restraining the defendants from interfering with his peaceful possession and enjoyment of the suit property. The plaintiff had claimed a right to the property on the basis of the sale in his favour on 16.04.2007.

4.The defendants had filed an initial written statement, in which they would contend that the lands in question are being cultivated by them right from the days of their forefathers and for over 50 years, they have been in enjoyment of the property. A portion of the property is treated as "Kalam" and in the other portions, the defendants have constructed a house, a cattle shed and some portions are used for cultivation. The entire extent is in their possession and enjoyment.



5.The defendants would further submit that while they are in possession of the property, they have at no point of time sold the property to any other person. They would further contend that the plaintiff has no right to the suit property by merely purchasing it and he has not cultivated the same. It is the defendants, who are in possession and enjoyment of the suit property by cultivating it. Therefore, they sought for dismissal of the suit. This written statement was filed on 04.01.2017. Thereafter, on 04.12.2019 the defendants had come forward with an additional written statement, in which apart from reiterating the contentions of the earlier written statement, they had made the following statements:-

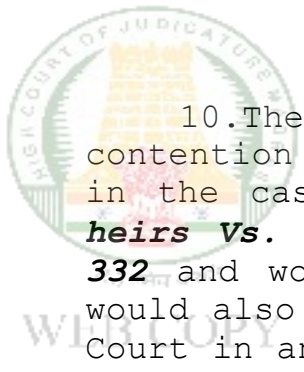
"In fact the defendants are having their title over the suit property not only on the basis of the prescriptive title but also on the basis of the adversary possessory title over the suit property."

6.After the filing of this additional written statement, the plaintiff has come forward to amend the plaint to include the relief of declaration besides seeking to make the consequential amendment to the pleadings.

7.The defendants had questioned the petition only on the ground that by this amendment, the plaintiff was seeking to introduce a relief, which is already barred by limitation. The defendants would also submit that adequate reasons had not been provided by the plaintiff. The defendants would further submit that the amendment is nothing but an attempt to fill up the *lacuna*. The defendants would further, in their counter, state that they have raised an objection that the suit property is the channel poramboke (வாய்க் கால் பொறும் போக்கு) and therefore, the introduction of this amendment 5 years after the filling of the suit is clearly barred by limitation and the amendment cannot be permitted.

8.The learned District Munsif, Melur after hearing the parties was pleased to allow the said application. Challenging the same, the defendants are before this Court.

9.Mr.K.Chengiz Khan, learned counsel appearing on behalf of the petitioners/defendants would submit that the learned Judge has erred in allowing the amendment application totally overlooking the fact that by allowing the amendment, the learned Judge was giving life to an already extinct relief. He would submit that even as early as in the written statement filed in the year 2017, the defendants had contended that the plaintiff had no title to the suit property and had pleaded their title to the same. The amendment petition was filed only in the year 2001. Therefore, by no stretch of imagination can it be stated that the amendment is in time.

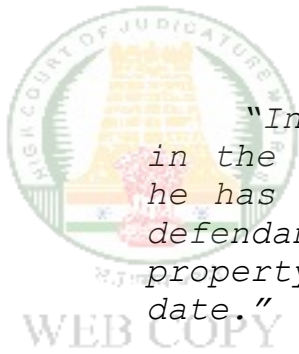


10.The learned counsel for the petitioners in support of his contention would rely upon the judgment of the Hon'ble Supreme Court in the case of **L.C.Hanumanthappa (dead) represented by his legal heirs Vs. H.B.Shivakumar** reported in **(2016) 1 Supreme Court Cases 332** and would place his reliance on paragraph No.29 therein. He would also submit that the above judgment has been followed by this Court in an unreported judgment in **C.R.P. (PD) Nos.4543 and 4544 of 2015 dated 07.01.2021 (Karuppuswamy Vs. Palaniammal and another)**. He would therefore plead that the suit be dismissed.

11.*Per contra*, Mr.M.P.Senthil, learned counsel appearing on behalf of the respondent/plaintiff would submit that the defendants for the first time had denied the title of the plaintiff only in their additional written statement, which is filed only in the year 2019. Immediately the plaintiff has come forward with the amendment petition and therefore, the contention of the defendants that the relief is barred by limitation is baseless. He would further submit that the defendants had earlier filed a revision petition in CRP. (MD) No. 1671 of 2019 to strike off the plaint in O.S.No.71 of 2016 on the ground that the suit property has been in possession of the defendants for over 45 years and patta has also been issued in their respective names. This Court by order dated 23.09.2019 was pleased to dispose of the above Civil Revision Petition without striking off the plaint, but directing the learned District Munsif, Melur to dispose of the suit O.S.No.71 of 2016 within a period of 4 months from the date of receipt of a copy of that order. This order has been passed only on account of the counsel for the defendants' conceding and agreeing for an early disposal of the suit within a time frame. Therefore, it does not now lie in the mouth of the defendants to oppose the amendment.

12.Heard the learned counsels on either side.

13.The impugned order is an order amending the plaint to include the relief of declaration. The only objection to the same is that it is time barred, since it is filed 5 years after the filing of the suit and 4 years after the filing of the written statement by the respondents. Reading of the original written statement would show that the only defense raised in the said written statement was that it was only the defendants, who are in possession of the suit property and that the plaintiff was not in possession of the same. It is in the additional written statement that the defendants had for the first time questioned the title of the plaintiff to the suit property. The records would show that the plaintiff has immediately taken out an application for amending the plaint and the same had been ordered. The defendants in their written statement have stated that the plaintiff cannot claim that he is in possession merely by having a sale deed in his favour. The averment in this regard is available at paragraph No.7 of the plaint, which reads as follows:-



"In paragraph 5 of the plaint, the plaintiff has no right in the suit property sic mere purchasing of the property and he has not cultivated anything in the suit property. But the defendants are in possession and enjoyment of the suit property and cultivating and possession of the property till date."

14. Therefore, the defendants have not denied the purchase by the plaintiff, but have only stated that by merely purchasing the property, the plaintiff cannot seek to state that he is in possession of the property. The judgment relied upon by the learned counsel for the petitioners/defendants would not apply to the facts of the instant case, since in the case that has been cited, the denial of title had been taken in the original written statement itself, whereas in the instant case the denial had taken place only in the year 2019 in the additional written statement and without a delay, the petition had been filed for amending the plaint. Therefore, I do not find any reason to interfere with the well considered order of the Court below.

15. In the result, the Civil Revision Petition stands dismissed. It is needless to state that it is open to the defendants to raise all their defense while arguing the suit. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

The District Munsif,
Melur.

+1 CC to M/s.M.P.SENTHIL, Advocate (SR-40501[F] dated 27/12/2021)

C.R.P. (MD) No.1031 of 2021

23.12.2021

AC (CO)

GC(10.02.2022) 4P 3C