



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.02.2021

CORAM :

WEB COPY

THE HONOURABLE MRS.JUSTICE J.NISHA BANUCRP(MD)No.1155 of 2020andCMP(MD)No.7393 of 2020

1)Muthusamy (Died)

2)Swaminathan

... Petitioner/Defendants 7 & 8

vs.

V.Padmavathy

... Respondent/Respondent/Plaintiff

Petition filed under Article 227 of the Constitution of India, against the order dated 06.03.2020 passed in I.A.No.945 of 2018 in O.S.No.99 of 2018 on the file of the learned IV Additional District Judge, Madurai, in dismissing the application filed U/o. VIII R.1 of the Code of Civil Procedure.

For Petitioners : Mr.N.Murugesan

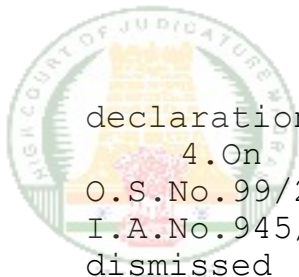
For Respondent : Mr.M.Siddharthan

ORDER

The 7th and 8th defendants in O.S.No.99/2018 and the applicants in I.A.No.945/2018 before the IVth Additional District Court, Madurai, are the revision petitioners. The respondent herein is the plaintiff before the trial court.

2.The plaintiff had originally filed the suit for bare injunction in O.S.No.185/1999 on the file of II Additional Sub Judge, Madurai, and the same has been dismissed on 29.04.2000. Challenging the same, the plaintiff filed appeal in A.S.No.177/2000 on the file of the Principal District Judge, Madurai, and the same was dismissed on 31.12.2003. Challenging the dismissal, the plaintiff filed a second appeal in S.A.No.393/2004 and it was also dismissed on 19.10.2012.

3.It is claimed that the defendants 7 and 8/revision petitioners had taken a stand in the written statement filed in O.S.No.185/1999 claiming title over the suit property. Therefore, it is contended that even during the year 1999, the plaintiff had knowledge that there is a dispute over the title and therefore, the plaintiff should have amended the plaint seeking declaration of title within 3 years from the date of knowledge and as that was not done, the present suit in O.S.No.99/2018 which is a suit for



declaration of title is barred by limitation.

4. On this ground, application to reject the plaint in O.S.No.99/2018 has been filed by the revision petitioner in I.A.No.945/2018. The learned 4th Additional District Judge has dismissed this I.A. On 06.03.2000. Challenging the same, the present revision petition has been filed.

5. It is pointed out by the learned counsel for the respondent that the suit in O.S.No.185/1999 and in O.S.No.99/2018 are not between the same parties and the defendant in O.S.No.185/1999 namey, Muthusamy is the 7th defendant in the subsequent suit and rest of the parties are different. It is contended that the trial court has given cogent reasons for refusing to reject the plaint in paragraph 15 and therefore, the revision petition has to be dismissed. Considering the fact that factual aspects are to be proved in the suit, the application to reject the plaint has been dismissed. Considering the facts and circumstances of the case, I am not inclined to interfere with the trial court's order and therefore, the Civil Revision Petition is dismissed.

6. The plea of limitation or the plea of constructive res judicata can be considered only based on evidence to be produced during trial. It is open to the revision petitioners to raise this plea after recording of evidence and the trial court shall consider the same at the appropriate context. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS II)

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Sub Assistant Registrar(CS)

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To

The IV Additional District Judge,
Madurai.

CRP(MD)No.1155 of 2020

DATED : 22.02.2021

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