



IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 19.12.2022

CORAM:

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYANC.R.P. (PD) No. 518 of 2021andCMP.No.4454 of 2021

1. Joseph,
2. Vincentpoul,
3. Therasa,
4. Suseela,
5. Dhanamery,
6. Pilomina
Petitioners

..

Versus

Chinnappa
...Respondent

Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 11.02.2021 made in I.A.No.80 of 2020 in O.S.No. 116 of 2017 on the file of the Additional District Munsif Court, Ulundurpet.

For Petitioners : Mr.C. Munusamy

For Respondent : No Appearance



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ORDER

This Civil Revision Petition has been filed by the petitioner herein against the fair and decretal order dated 11.02.2021 made in I.A.No.80 of 2020 in O.S.No. 116 of 2017 on the file of the Additional District Munsif Court, Ulundurpet.

2. The petitioners herein are the plaintiffs and the respondent herein is the defendant in the suit in O.S. No.116 of 2017 on the file of the Additional District Munsif Court, Ulundurpet.

3. The case of the petitioners is that the plaintiffs/petitioners herein have filed the suit in O.S. No.116 of 2017 on the file of the Additional District Munsif Court, Ulundurpet. seeking for declaration and permanent injunction against the defendant/respondent herein, in respect of the suit property. During the pendency of the suit, the defendant/respondent herein has filed the written statement seeking right over the property by virtue of Sale Deed dated 03.10.1986 executed by the plaintiffs' father in his favour and Separate Patta No.70 stands in his name. Based on the



written statement filed by the defendant/respondent herein, the plaintiffs/petitioners herein have filed the application in I.A. No.80 of 2020 before the Trial Court seeking to amend the prayer in the pleadings of the suit. The Trial Judge after perusing the materials brought on records and hearing both sides dismissed by order dated 11.02.2021 on the ground that the application has been filed beyond the limitation period. Being aggrieved by the aforesaid order, the plaintiffs/petitioners herein have filed the present Civil Revision Petition seeking to set aside the same.

4. The learned counsel for the petitioners would submit that the defendant/respondent herein had filed the written statement only on 08.08.2017 claiming over the suit property by virtue of Sale Deed dated 03.10.1986 and Patta No.70 stands in his name and questioning the territorial jurisdiction of the aforesaid suit based on the guide line value of the suit property. Hence, the petitioners have filed the application in I.A. No. 80 of 2020 to amend the prayer in the plaint enabling them to adduce the evidence in accordance with the pleadings. Without considering the aforesaid fact, the learned Trial Judge committed error by dismissing the application which is apparent on the face of record.



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5. It has been further submitted that the defendant/respondent herein has filed written statement on 08.08.2017 and the application in I.A. No.80 of 2020 has been filed on 22.01.2020 by the plaintiffs/petitioners herein from the date of their knowledge ie.08.08.2017 within a period of limitation of three years. While being so, the learned Trial Judge has dismissed the application holding that the application has been filed after 4 years which has been wrongly construed. Hence, he seeks to set aside the order dated 11.02.2021 in I.A. No.80 of 2020 passed by the Trial Court.

6.Heard the learned counsel for the petitioners and perused the materials available on record. Despite notice served on the sole respondent and his name printed in the cause list, there is no representation on the side of the respondent.

7.On a perusal of the records, it is seen that the suit in O.S. No.116 of 2017 has been filed before the Trial Court by the plaintiffs/petitioners herein seeking for declaration and permanent injunction against the sole defendant/respondent herein in respect of the suit property. Pending the



aforesaid suit, the defendant/respondent herein has filed the Written Statement on 08.08.2017 claiming over the suit property by virtue of Sale Deed dated 03.10.1986 executed in his favour by the plaintiffs' father and Separate Patta No.70 issued in his name. Only after filing the written statement, the plaintiffs/petitioners herein came to know about the aforesaid fact. Hence, the plaintiffs/petitioners herein have filed the I.A.No.80 of 2020 on 22.01.2020 within a period of three years to amend the prayer in the plaint to adduce the evidence accordingly. However, the Trial Judge has wrongly dismissed the application holding that it has been filed after four years seeking to amend the plaint in O.S. No.116 of 2017 while the same has been filed within stipulated period of three years. It is settled principle of law that the evidence could be adduced according to the pleadings of the suit and hence it is necessary to amend the plaint in this case enabling the plaintiffs/petitioners herein to adduce the evidence considering the pleadings. Further, the plaintiffs/petitioners herein have also challenged the Sale Deed dated 03.10.1986 which is said to have been executed by their father and Separate Patta No.70 which stands in the name of the defendant/respondent herein. Hence in the interest of Justice and in order to avoid multiplicity of suit proceedings, the petition for



amendment ought to have been considered by the Trial Court well within the period of limitation the petition for amendment is filed. Hence, the order dated 11.02.2021 in I.A.No.80 of 2020 in O.S.No.116 of 2017 passed by the Trial Court is hereby set aside.

8.Hence, it is just and necessary to amend the plaint and opportunity of filing additional Written Statement is also to be granted. Thereafter, if necessary appropriate issues to be framed after amendment. Further, the Trial Court is hereby directed to proceed with the Trial after affording opportunity to the parties in O.S. No.116 of 2017 and dispose of the the same as expeditiously as possible.

9.In the result, the Civil Revision Petition is allowed. Consequently connected miscellaneous petition is closed if any. No Costs.

19.12.2022

Lbm

Index : Yes/No

Speaking Order : Yes/No



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To:

1. The Additional District Munsif Court, Ulundurpet.
2. The Section Officer, V.R.Section
High Court, Madras.



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CRP.No.518 of 2021

V.BHAVANI SUBBAROYAN,J

Lbm

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