



O.S.A.Nos. 175, 176 & 179 of 2022

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.07.2022

CORAM :

THE HON'BLE MR. JUSTICE M. DURAISWAMY

AND

THE HON'BLE MR. JUSTICE SUNDER MOHAN,

O.S.A.Nos. 175, 176 & 179 of 2022

and C.M.P. No.11052 of 2022

1. S. Dhanushkodi

2. D.Nivedhitha

3. D.Sindhumathi

4. D.Sruthi

.. Appellants in all OSAs

v.

1. A.K. Sasikumar

2. J. Walter Philips

... Respondents in all OSAs

O.S.A.No 175 of 2022 : Original Side Appeal filed under Order XXXVI Rule 1 of the Original Side Rules under Clause 15 of Letter Patent to set aside the order dated 08.02.2022 in A.No.141 of 2022 in C.S.No.296 of 2021.



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O.S.A.No 176 of 2022 : Original Side Appeal filed under Order XXXVI Rule 1 of the Original Side Rules under Clause 15 of Letter Patent to set aside the order dated 08.02.2022 in A.No.139 of 2022 in C.S.No.296 of 2021.

O.S.A.No 175 of 2022 : Original Side Appeal filed under Order XXXVI Rule 1 of the Original Side Rules under Clause 15 of Letter Patent to set aside the order dated 08.02.2022 in A.No.140 of 2022 in C.S.No.296 of 2021.

For Appellants : Mr. K. Chandrasearan (in all Appeals)

COMMON JUDGMENT
(Judgment was delivered by SUNDER MOHAN, J.)

Since the issue involved in all these Original Side Appeals are common and relating to the very same suit, all the Original Side Appeals are disposed of by this common order.

2. Challenging the order passed by the learned Single Judge in Application Nos. 139 to 141 of 2022 in C.S.No.296 of 2021, filed by



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the 1st respondent/plaintiff to implead certain parties, the defendants have filed the above Original Side Appeals.

3. The case of the plaintiff in the applications was that he was dispossessed by the defendants being landlord on 13.04.2021. The suit in C.S.No.296 of 2021 was filed by the plaintiff under section 6 of the Specific Relief Act. After the written statement filed by the defendants, the plaintiff came to know that the defendants had inducted a tenant in the property and therefore, they wanted to implead the tenant as party-defendant in the suit and as respondents in the applications filed by the plaintiff. The appellants/defendants had filed counter stating that the said applications are barred by limitation as per section 21 of the Limitation Act, since the relief under section 6 of the Specific Relief Act could only be filed within six months from the date of dispossession.

4. The learned Single Judge allowed the applications filed by the 1st respondent-plaintiff and impleaded the new tenant as defendant in the suit and respondent in the applications. Aggrieved by the said order, the appellant has preferred the above Original Side Appeals.



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5. The learned counsel for the appellants submitted that as per section 21 of the Limitation Act, if any new party-defendant is impleaded in the suit, the suit shall be deemed to have been instituted as against that person on the date when he was impleaded. Admittedly, according to the appellants, this is beyond six months period prescribed under section 6 of the Specific Relief Act and therefore, he ought not to have been impleaded as party defendant/respondent.

6. We find that proviso to section 21 states that where the court is satisfied that the omission to include a new plaintiff or defendant was due to a mistake made in good faith, it may direct that the suit as regards such plaintiff or defendant shall be deemed to have been instituted on any earlier date.

7. Further it is the contention of the learned counsel for the appellants, that a new tenant was inducted much prior to the filing of the suit by the 1st respondent/plaintiff. We find that there is nothing on record to show that the plaintiff had knowledge about the induction of



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the new tenant in the suit property by him. Even, according to the learned counsel for the appellants, the appellants/defendants disclosed in their written statement that a new tenant was inducted in the premises and only thereafter the 1st respondent/plaintiff came to know about the fact that a new tenant was inducted.

8. In these circumstances, in our view, non-impleading the new tenant within the statutory period prescribed under section 6 was due to *bona fide* mistake and because of the lack of plaintiff's knowledge about the fact that new tenant was inducted and hence, the applications are not barred by limitation and would squarely fall within the proviso to section 21(1) of the Limitation Act.

9. For the above reasons, we hold that the order passed by the learned Single Judge is in accordance with law. Hence, the Original Side Appeals are liable to be dismissed. Accordingly, the Original Side Appeals are dismissed. In view of the submission made by the learned counsel for the appellant, we request the learned Single Judge to hear the Applications in O.A.Nos. 611 and 612 of 2021 at the



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earliest. No costs. Consequently, connected Miscellaneous Petition is closed.

[M.D., J.] [S.M., J.]
14.07.2022

Index : Yes/No

Speaking Order/Non Speaking Order

Rj



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