



CRP (PD) Nos.43 of 2014 & 1258 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 06.07.2022

CORAM

THE HONOURABLE Mrs. JUSTICE J.NISHA BANU

C.R.P.(PD)Nos.43 of 2014 and 1258 of 2017

and

M.P.No.1 of 2014 & C.M.P.Nos.5888 of 2017

Majide Mohamed Pallivasal
Kattumannar Koil,
represented by its Muthavalli
S.Abdul Rasak (died)
now substituted A.Mohamed Moinudeen
S/o Late Abdul Razack as Muthavalli
No.275, Katcheri Street,
kattumannarkoil,
Cuddalore District.
(Substituted vide court order dt.15.4.2021
made in CMP13235/2020 in
CRP(PD)No.43/2014 by ADJCJ) Petitioner in both the CRPs.

vs

1. Ramalingam
2. Thirumal alias Rajan
3. Sathyadasan Respondents in both the CRPs.

CRP.No.43 of 2014 has been filed under Article 227 of the constitution of India against the fair and decretal order passed in I.A.No.364 of 2009 in O.S.No.64 of 2002 dated 06.09.2011 on the file of the Court of District Munsif cum Judicial Magistrate, Kattumannarkoil

CRP.No.1258 of 2017 has been filed under Article 227 of the Constitution



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of India against the order passed in I.A.No.94 of 2014 in O.S.No.64 of 2002 dated 17.08.2016 on the file of the Court of District Munsif cum Judicial Magistrate, Kattumannarkoil

For Petitioner : Mr.A.Muthukumar

For respondents : Mr.Hema Sampath,
Senior Counsel
for Ms.R.Meenal

COMMON ORDER

Civil Revision Petition No.43 of 2014 has been filed against order passed in I.A.No.364 of 2009 in O.S.No.64 of 2002 dated 06.09.2011, dismissing the petition to amend the plaint and to include additional relief of mandatory injunction. Civil Revision Petition No.1258 of 2017 has been filed against the order passed in I.A.No.94 of 2014 in O.S.No.64 of 2002 dated 17.08.2016, wherein the petitioner seeking to restore the suit has been ordered on condition the petitioner should file proof affidavit on or before 24.08.2016, failing which, the said I.A. would be automatically dismissed. Since the petitioner did not comply with the said order, I.A.No.94 of 2014 as well as the suit were dismissed on 24.08.2016.

2. Learned counsel for the petitioner would submit that the petitioner is a Wakf and therefore, no adverse possession could be pleaded against it. He would further submit that Article 113 of the Limitation Act has no application



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since the act of the respondents/defendants is continuous and each moment gives rise to a fresh cause of action and therefore, the order of dismissal of the petition for amendment of plaint is liable to be set aside. He would further submit that the Court is bound to take subsequent events or developments in adjudicating the rights of the parties and grant appropriate reliefs and that the relief of mandatory injunction is not at all barred by limitation. The relief of mandatory injunction in substance is the relief of recovery of possession and in the absence of any period of limitation prescribed for it, the Court below ought to have allowed the application for amendment of plaint. The petitioner/plaintiff is a Pallivasal (Mosque) and the respondents/ defendants are encroachers and that the trial court ought not to have imposed condition that the petitioner should file proof affidavit on or before 24.08.2016, failing which, the said I.A. would be automatically dismissed, when CRP.No.43 of 2014 is pending on the file of this Court. Hence, the learned counsel would pray to allow the CRPs.

3. On the contrary, the learned counsel for the respondents would submit that the suit was dismissed for non-prosecution on 09.06.2008 and on 17.06.2009, I.A.No.516 of 2008, to restore the same, filed by the petitioner was allowed on payment of cost of Rs.500/- to the respondent. In September 2009, the petitioner filed I.A.No.364 of 2009 for amending the plaint to include



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the prayer for mandatory injunction alleging that the respondents had trespassed into the suit property, pending proceedings. The application was rightly dismissed by the trial Court on finding that the suit was filed on 12.6.2002 and the Commissioner was appointed on 15.09.2003 and the report of the Commissioner was submitted on 9.3.2004 and the application for amendment was filed after a period of 5 years on 2.9.2009 and hence, it is barred by time. The cause of action for the petition arose in the year 2003 but the petitioner had filed the petition for amendment after 5 years. Hence, the petition for amendment was dismissed. Challenging the same, CRP.No.43/2014 was filed. On 7.2.2014, the suit was dismissed for non-prosecution for the second time and I.A.No.94 of 2014 was filed to restore the same. The petitioner claimed that he had an order of stay in CRP.No.43 of 2014. On 17.8.2016, the trial Court restored the suit on condition that the petitioner should file proof affidavit on or before 24.08.2016, failing which, I.A.No.94 of 2014 will be automatically dismissed. As the petitioner did not comply with the said order, both I.A. and the suit were dismissed. The petitioner is abusing the process of court by protracting the proceedings. Hence, both the CRPs have to be dismissed.

4. Heard the learned counsel for the petitioner and the learned counsel for the respondents.



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5. The petitioner/plaintiff filed O.S.No.64 of 2002 before the District Munsif Court, Kattumannarkoil, against the respondents/defendants for permanent injunction restraining the respondents from interfering with the petitioner's possession and enjoyment of the suit tank. The respondents contested the suit by filing a written statement, disputing the petitioner's title to the suit tank stating that it belonged to the panchayat and that the petitioner had no right in the tank and that the respondents never trespassed into the suit property and they had the boundaries clearly marked for their property. The suit was dismissed for non-prosecution on 09.06.2008. The said suit was restored with cost and the petitioner filed an application in I.A.No.364 of 2009 in September 2009 for amending the plaint. The Court below had rightly dismissed the same stating that the period of 3 years time have lapsed as the petition was filed after 5 years. Against the same, the petitioner filed I.A.No.365/2009 which was also dismissed on 15.07.2012. Challenging the same, the petitioner filed CRP.No.43 of 2014. Subsequently, on 7.2.2014, the suit in O.S.No.64 of 2002 was dismissed for non-prosecution for the second time and I.A.No.94 was filed to restore the suit. The petitioner claimed that he had an order of interim stay in CRP.43 of 2014. Despite several adjournments, the order copy of stay was not produced before the trial Court. It is seen from the records that interim stay was ordered in CRP.No.43 of 2014 for a period of two



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weeks on 21.02.2014 and thereafter, the said stay was not extended. However, the trial court allowed the I.A.No.94 of 2014 on 17.08.2016 on condition that the petitioner should file proof affidavit on or before 24.08.2016. The petitioner did not comply with the said order by filing the proof affidavit, instead the petitioner, has filed C.R.P.No.1258 of 2017 before this Court in March, 2017 challenging the conditional order dated 17.08.2016. Thus, CRP.No.1258 of 2017 is not maintainable as the suit had already been dismissed for non-compliance of the order to file the proof affidavit. The suit is of the year 2002. Though several opportunities were given to the petitioner, he did not take any diligent steps to prosecute the case. He had successfully dragged on the proceedings for the past 20 years. The said act of the petitioner is nothing but only to protract the proceedings, which can be termed as a dilatory tactics. Therefore, this Court is of the view that both the civil revision petitions are liable to be dismissed. Accordingly, both the Civil Revision Petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

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Index:Yes/No
Speaking/Non-speaking order
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To
The District Munsif cum Judicial Magistrate,
Kattumannarkoil .



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J.NISHA BANU,J.

Vsi

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