



C.R.P (PD) No.2699 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2022

CORAM: **JUSTICE N.SESHASAYEE**

C.R.P. (PD) No.2699 of 2021
and C.M.P. No.19821 of 2021

A.Rajkannu

... Petitioner

Vs.

1.Pappa
2.Lakshmi
3.Thilagavathi
4.Madheshwari

... Respondents

PRAYER: The Civil Revision Petition filed under Article 227 of the Constitution of India, to call for the records pertaining to I.A. No.2 of 2021 in O.S. No.237 of 2017 on the file of the Principal District Munsif Court, Thiruchengodu and set aside the same.

For Petitioner : Mr.Dinuprashanth.S

For Respondents : Mr.A.Sivaji



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ORDER

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The present revision is taken out by the plaintiff in O.S. No.237 of 2017, wherein he challenges an order dismissing his application in I.A. No.2 of 2021 for amendment of the plaint.

2. The plaintiff has laid the suit for bare injunction and the defendant resisted the suit. Construing the said defence as some kind of denial of plaintiff's title, plaintiff moved the trial court with I.A. No.2/2021 for amending the plaint to seek a relief of declaration of his title over the suit property. This application is resisted by the defendants on the ground that the said prayer is barred by limitation. This order is now being challenged in this revision.

3. Mr.S.Dinuprashanth, learned counsel appearing for the revision petitioner submitted:

(a) There is no point in denial of plaintiff's title and even if a denial can be urged in the same, it does not give any great input as to defendant's title and relied on paragraphs 20.3 and 21 of a judgment of this court in *Arulmigu Velukkai Sri Azhagiya Singaperumal Devasthanam vs. G.K.Kannan and Ors.* [2020



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(3) CTC 69 : 2020-2-LW-317 : (2020) 4 MLJ 625], and the

same read thus:

" 20.3. It can now be deduced that, to constitute a cloud on plaintiff's title, there must be evidence for the Court to conclude prima facie that the plaintiff's assertion of title to a legal character; or to a right over a property has come under the cloud. Let it not be forgotten, that life's experience in this country, which both the Courts and the legal practitioners would vouchsafe, that not every litigant makes a bona fide denial of plaintiff's title. While, a bona fide denial of plaintiff title with some evidence may merit consideration, to non-suit the plaintiff with a colourable denial of former's title will be unconscionable, if only it is acknowledged that fairness is integral to our adversarial jurisprudence.

21. Hence, it is necessary for the Court to weigh:

The quality of the pleadings to ascertain if the defendant alleges if a third party to the suit has the title, or, if he traces his title to the same source from which plaintiff also derives title, or if the defendant relies on an independent source of title to some other source;

If the evidence produced by the defendant to prove his plea of denial of the plaintiff's title covers the same period for which the plaintiff has produced the evidence, or whether such evidence as produced by both the plaintiff and the defendant are separated by a clear time-line;

If any adverse inference is required to be drawn against any of the parties for not producing the evidence which is in their capacity to produce, and evaluate the relative quality of the



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evidence made available before it. (What is indicated here is not exhaustive since every case has its own character. When the rule of probability determines the nature of the decision to be made, it can never be exhaustive too.). This precisely is the exercise what the Court engages in it is required to enter a finding on a disputed title incidentally in a suit for bare injunction."

(b) that at any rate, the period of limitation was literally frozen by the order of the Hon'ble Supreme Court in *suo motu* WP(Civil) No.3 of 2021.

4. Per contra, the learned counsel appearing for the respondent submitted:

(a) that the revision petitioner is not entitled to take advantage of the Supreme Court's order in *Suo Motu* WP (Civil) No.3 of 2021, since he ought to have obtained knowledge about the denial latest by 28.02.2018, which implies the date on which the defendant had filed the written statement.

(b) So far as the allegation about the denial of title is concerned, the defendant has made a pointed denial. While the plaintiff is entitled to 810 sq.ft. he claimed title to over 1213 sq.ft.



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5. This court carefully weighed the rival submissions.

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6. So far as limitation is concerned, it is a question of law and fact and it is only appropriate that the same is decided by the trial court. This is adequate enough reason for this court to interfere with the order of the trial court.

7. Accordingly, the revision is allowed. The order of the trial court dated 19.08.2021 made in I.A. No.2 of 2021 in O.S. No.237 of 2017, is set aside. The defendants/respondents are at liberty to file additional written statement taking such contentions as are available to them to resist the prayer of declaration now introduced by way of an amendment to the plaint, if they are desirous of so doing. However, there will be no order as to costs in this revision. Consequently, the connected civil miscellaneous petition is closed.

25.04.2022

Asr

To
The Principal District Munsif, Tiruchengodu



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N.SESHASAYEE, J.,

Asr

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