



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.11.2021

PRONOUNCED ON : 02.02.2022

C O R A M

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

Civil Revision Petition No.1987 of 2017
and
CMP No. 9592 of 2017

Subramaniam

..Petitioner/plaintiff

Vs

Eswaran

..Respondent/Defendant

Prayer: Civil Revision Petition is filed against the fair and decreetal order passed in I.A.No.1303 of 2016 in O.S.No.3024 of 2012 dated 15.03.2017 on the file of the Third Additional District Munsif, Coimbatore.

For Petitioner .. Mr.E.K.Kumaresan

For Respondent .. Mr.K.Govi Ganesan

ORDER

This Civil Revision Petition is directed against the fair and decreetal order passed in I.A.No.1303 of 2016 in O.S.No.3024 of 2012 dated 15.03.2017 on the file of the Third Additional District Munsif, Coimbatore.

2.The case of the petitioner before the Court below in nutshell is as follows:

The petitioner is the plaintiff. He filed a suit in O.S.No.3024 of 2012 on the file of Third Additional District Munsif, Coimbatore for permanent injunction restraining the defendant, his men, agents, servants, relatives and anybody claiming under them from in any way interfering with the plaintiff's peaceful possession and enjoyment of the suit property and to direct the defendant to pay the cost of the suit.

3.The respondent is the defendant in the suit. The plaintiff and defendant are the brothers. Their father executed a



settlement deed in favour of the plaintiff with regard to the suit schedule property and for the other property ie., Item No.II, the enjoyment right was given to their father. It is the case of the plaintiff that the defendant is trying to cancel the settlement executed in favour of the plaintiff. When the defendant is making illegal trespass into the suit property, the plaintiff filed the aforesaid suit for the said relief. Pending suit, the petitioner filed I.A.No.1303 of 2016 for amending the plaint. The defendant filed a counter statement denying the allegations contained in the application. The defendant contended that the relief sought for declaring the settlement deed is null and void by way of amendment is barred by limitation. It is also contended that the allegation that the plaintiff came to know about the details of cancellation and the sale deeds in favour of the respondent in the month of March 2016 is absolutely false and opposed the application.

4. Considering the oral and documentary evidence, the trial Court dismissed the application for amending the plaint on the ground that the suit was filed in the year 2010. I.A. filed in the year 2016. However, the defendant has filed his written statement in the year 2011 itself. After five years, the petitioner filed the application for amending the plaint, which is barred by limitation. It is also the finding of the trial Court that the cancellation deed and sale deed executed in the year 2010 itself and even after filing of the written statement, for three years, no steps were taken to file the application for amendment of the plaint and hence, the petitioner is not entitled to any relief. Against the order of dismissal, the petitioner is before this Court with this Civil Revision Petition.

5.The learned counsel for the petitioner raised the following grounds:

1. The trial Court failed to consider the cancellation of settlement deed and sale deed relied on by the respondent are void as per law and hence, the petitioner is entitled for amending the plaint and such right has been exercised by the petitioner within three years from the date of knowledge.

2.By allowing the application for amending the plaint, no prejudice is caused to either side.

3.The trial Court has failed to consider the pre-trial amendment.

6.Heard the learned counsel for the petitioner and the learned counsel for the respondent.

7.The petitioner herein has filed the main suit in O.S.No.3024 of 2012 seeking for the relief of permanent injunction restraining the defendant his agents and servants in



any way interfering with the plaintiff's peaceful possession and enjoyment of the suit property. The respondent has filed his written statement.

8. The plaintiff in his plaint claimed that the suit properties are the absolute property of plaintiff under a registered settlement deed dated 11.11.1994 executed by his father one Nachimuthu Gounder and from the date of settlement, he is in lawful possession and enjoyment of the property. The respondent herein has filed his written statement by denying the averments of the plaint and contended that in a family arrangement it was agreed that after settling a portion of the properties in favour of their sons, the parents are entitled to retain a portion of the property absolutely by themselves and as per the family arrangement Nachimuthu Gounder had executed a registered settlement deed in favour of the respondent on 11.11.1994 in respect of an extent of 2.91 acres and mother had executed a settlement deed in favour of the petitioner herein to an extent of 3.23 1/2 acres and she had retained an extent of 2.27 acres for herself. The respondent herein has also stated that subsequently the respondent purchased from his mother and the plaintiff an extent of 2.27 acres under a registered sale deed dated 30.03.2007. The respondent has further stated that since the petitioner herein threatened to dispossess his father, the father himself, had cancelled the settlement deed dated 11.11.1994 in respect of item 2 of the suit property under the registered cancellation deed dated 20.10.2010 and voluntarily executed a registered sale deed in favour of the respondent for a proper consideration of Rs.1,24,000/- and put the respondent in possession of the suit property. The above written statement was filed by the respondent/defendant in the year 2011.

9. Admittedly, the petitioner herein has filed I.A.No.1303 of 2016 for amending the plaint prayer seeking declaration that the cancellation deed executed by the father in respect of the 2nd item of the suit property is null and void and also for declaration that the sale deed executed by his father Nachimuthu Gounder in favour of the defendant on 20.10.2010 is null and void. The trial Court after hearing both dismissed this petition with a finding that the petition is barred by limitation. The trial Court has also observed that the suit was filed in the year 2010 and the petition for amendment was filed in the year 2016 and the written statement of the defendant was filed in the year 2011 itself. As rightly pointed out by the trial Court though the written statement of the defendant was filed by the defendant as early as in the year 2011 by stating about the cancellation of settlement deed and registration of sale deed, the petitioner herein has not taken any steps immediately after filing of the written statement and the amendment petition was filed belatedly after five years which is obviously barred by



limitation. The trial Court has rightly dismissed the amendment petition and this Court has no hesitation to confirm the order of the trial Court.

10. In the result, this Civil Revision Petition is dismissed. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

gbi

To

The Third Additional District Munsif,
Coimbatore

+1cc to M/s.E.K.Kumaresan, Advocate, S.R.No.6256

+1cc to M/s.K.GoviGanesan, Advocate, S.R.No.7046

C.R.P.No.1987 of 2017

KSM(CO)
RGA(14/02/2022)