



C.R.P. No. 4304 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2022

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

C.R.P.No.4304 of 2017

G.Venkatachalam,
S/o. Late V. Govindaraja Mudaliar ... Petitioner

Vs.

G.Harikrishnan,
S/o. Late M.Govindarajan ... Respondent

PRAYER: Civil Revision Petition filed under Art. 227 of Constitution of India, praying to set aside the fair and decreetal order dated 12.09.2017 made in I.A.No.266 of 2017 in O.S.No. 26 of 2014 on the file of learned District Munsif Court, Gudiyattam.

For Petitioner : Mr. N. Manokaran

For Respondent : Mr.T.Dhanyakumar



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ORDER

The revision petitioner is the defendant in the suit in O.S. No. 26 of 2014 on the file of District Munsif Court, Gudiyattam, which was filed by the respondent/plaintiff herein for the relief of permanent injunction against the defendant.

2. The said suit was contested by the defendant by filing written statement. The defendant herein is the brother of deceased Gajalakshmi and the present plaintiff, who is the husband of deceased Gajalakshmi filed the suit. Denying the plaintiff's contentions, the defendant also filed the written statement. Thereafter, the plaintiff filed an application in I.A.No.266 of 2017 under Order 6 Rule 17 of C.P.C. praying to amend the pleadings in the plaint by including prayer of declaration and to remove the illegal construction. The said application was strongly opposed by the defendant stating that the relief of declaration claimed by the plaintiff is barred by limitation and also without impleading other legal heirs of Gajalakshmi, the plaintiff filed the suit, as such is not maintainable. On considering both side



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submissions, the trial court allowed the application stating that during the pendency of suit proceedings, the defendant approached the court to amend the pleadings in the plaint. However, if the relief of declaration is barred by limitation, the defendant is entitled to raise his objection at the time of trial. Without any evidence in both oral and documentary, that application cannot be decided now. To avoid multiplicity of proceedings by relying the ratio laid down in **2012 (8) MLJ 805**, the trial court allowed the said application. Challenging the said findings, the defendant preferred this Civil Revision Petition.

3. The learned counsel for Revision Petitioner would submit that as per Sec.3 of Limitation Act, which debars the court from entertaining the time barred suit, notwithstanding the fact that such defence were taken or not. So, without appreciating the said fact, the trial court erroneously allowed the application because the plaintiff is very well knew the contention of defendant, but purposely he filed the application belatedly, however, the same was allowed by the trial court. Hence, he prayed to set aside the findings of the trial court.



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4. The learned counsel for respondent submitted that after filing the written statement, the plaintiff came to know that the defendant totally denied the plaintiff's right over the property and his possession also illegal in nature. Therefore, the necessity arose for him for amending the plaint by including the prayer of declaration and the same was rightly appreciated by the trial court. Hence, he prayed to dismiss this Civil Revision Petition.

5. Heard and considered rival submissions made by learned counsel of petitioner as well as respondent and perused the records.

6. On considering submissions of both sides and on perusal of records, it reveals that one Gajalakshmi, who is sister of defendant was passed away leaving behind the present plaintiff as one of the legal heir. The plaintiff, as husband of deceased Gajalakshmi, he filed the suit for permanent injunction against the present defendant. But, during the pendency of suit proceedings, he has filed the said application for amendment including the prayer of declaration and also recovery of possession stating that the defendant illegally occupied the property and dispossessed the plaintiff. But, the contention of plaintiff that neither the defendant nor their legal heirs have right over the property. However, on a



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wrongful facts, the defendant claiming right over the property and filed the vexatious suit. Furthermore, he is not entitled to include the prayer of declaration as it is time barred one. But, the fact reveals that based on a Will, the said Gajalakshmi said to be one of beneficiary and as a legal heir of Gajalakshmi, her husband filed the suit. Admittedly, the said Gajalakshmi died leaving behind her husband, plaintiff herein, her son Muralidhar and her daughters Vihyasri and Bharathi, but the plaintiff has not impleaded those legal heirs in the suit. Though the learned counsel for plaintiff contended that on behalf of legal heirs, the present plaintiff contested the suit, on seeing the facts, the plaintiff has to include all the legal heirs, who are necessary parties to the proceedings. Therefore, the plaintiff is directed to implead his son and daughters as plaintiffs in the suit. Furthermore, with regard to proposed amendment, it will not cause any hardship to the defendant and the defendant is entitled to raise his objections with regard to the nature of case and the same is to be decided only on considering oral and documentary evidence, which was rightly appreciated by the trial judge, which needs no interference.



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WEB COPY 7. In the result, this Civil Revision Petition is dismissed. The plaintiff is directed to implead all other legal heirs of Gajalakshmi as a parties to the suit and liberty is granted to the defendant to file additional written statement if any with regard to the said amendment. However, since the suit is pending from the year of 2014, the trial court is directed to proceed with the trial and dispose the case within a period of six months from the date of receipt of copy of this order. No costs.

02.11.2022

Index : Yes / No
Internet : Yes / No
Speaking/Non-speaking order
rpp
To

District Munsif,
Gudiyattam.



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T.V.THAMILSELVI, J.

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