



REV.APLC (MD) No.101 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **01.11.2022**

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C O R A M

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

REV.APLC (MD) No.101 of 2022

and

CMP (MD) No.5876 of 2022

1.Kathirvel

2.Alagiriraj

... Review Applicants

Vs.

1.Muthusamy

2.Alagirisamy

3.Duraisamy @ Alagarsamy

4.Nagarajan

... Respondents

PRAYER: Review Application is filed under Order 47 Rules 1 and 2 r/w Section 114 of the Code of Civil Procedure, 1908, to review the order dated 10.03.2022 made in CRP(MD)No.183 of 2022 and confirm the fair and decreetal order dated 22.10.2021 made in IA.No.1 of 2021 in OS.No.214 of 2009 on the file of the District Munsif Court, Periyakulam.

For Review Applicants : Mr.A.Arumugam

For Respondent : Mr.G.Prabhu Rajadurai for

No.1

Mr.Thirunavukkarasu

For Respondent

Nos.2 to 4

: No appearance



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ORDER

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The review application is filed under section 114 r/w Order 47 Rules 1 and 2 of CPC as against the order dated 10.03.2022 made in CRP(MD)No.183 of 2022.

2.This review application is filed by the review applicants/ respondents in CRP(MD)No.183 of 2022, which was disposed of by this Court on 10.03.2022. The said civil revision petition was filed by the first respondent as against the fair and decreetal order passed in IA.No.1 of 2021 in OS.No.214 of 2009, dated 22.10.2021. The suit was filed by these review applicants/ plaintiffs for the relief of injunction. Subsequently the plaintiffs have filed an application under Order VI Rule 17 of CPC in IA.No.1 of 2021 to amend the relief for declaration also and the same was allowed by the trial Court with a cost of Rs.3,000/-. Challenging the said order, the civil revision petition was filed, which was allowed by this Court. Aggrieved over the same, the present review application is filed.



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3.This Court while disposing of the said civil revision petition took note of the proceedings in OS.No.202 of 2009 and written statement filed by the respondents in the suit in OS.No.214 of 2009 and held that the plaintiffs are not permitted to file the application in IA.No.1 of 2021 since the claim was barred by limitation. Now the review application is filed by the respondents 1 and 2 in the civil revision petition that the Court has relied on documents, which were not placed before the Court and the plaint in OS.No.202 of 2009 and the written statement were not placed before the Court. However, the court has relied on those documents and arrived at a conclusion.

4.The learned Counsel for the review applicants submits that this Court allowed the civil revision petition based on the plaint in OS.No.202 of 2009 and the written statement filed by the respondents in OS.No.214 of 2009 and held that IA.No.1 of 2021 was barred by limitation, therefore, these plaintiffs are not entitled to amend the plaint after a period of three years when the respondents have denied their title in the written statement. In the absence of the documents being produced



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before the Court, placing reliance upon those documents is not permissible in law.

5.The learned Counsel for the respondents submits that this review application is filed through a different counsel on change of vakalath and the typed set of papers filed in the civil revision petition is not annexed in the review application. The Court has relied on the written statement filed in OS.No.214 of 2009 and the same is placed before this Court in the typed set of papers and wherein, there is a specific denial of the title of the plaintiffs and knowing that the application in IA.No.1 of 2021 was filed after a period of 10 years and therefore, it is barred by Article 58 of the Limitation Act and therefore, the civil revision petition was allowed. Therefore, there is no reason to interfere with the orders of this Court.

6.Heard the learned on either side and perused the materials placed on record.

7.The review applicants/ plaintiffs have filed the suit in OS.No.214 of 2009 for the relief of injunction.



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Pending the suit, they have filed an interlocutory application in IA.No.1 of 2021 to amend the plaint for the relief of declaration. The first respondent / third defendant has claimed that he has already filed a suit for partition denying title of the property in OS.No.202 of 2009. By referring the same, he has also filed written statement in the year 2010. The written statement was filed on 12.03.2010 by referring earlier suit filed by the respondents for partition in OS.No.202 of 2009 and counter was also filed in IA.No.1 of 2021, but the review applicants have not denied the averments by filing their response. Therefore this Court relying on the materials placed before this Court allowed the civil revision petition. The claim of the petitioners are barred by limitation act, in view of the provisions under Article 58 of the Limitation Act and there is no error apparent in the orders of this court and therefore, this review application is dismissed. No costs.

01.11.2022

Internet : yes/No
dsk
To
The District Munsif,
Periyakulam.



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B.PUGALENDHI., J

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