



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.04.2022

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

CR.P. (MD) No.1673 of 2017

and

C.M.P. (MD) No.9253 of 2017

1.Arumugam

2.Lakshmi

... Petitioners/Petitioners/Plaintiffs
Vs.

Mahamayee

... Respondent/Respondent/Defendant

PRAYER: Civil Revision Petition under Article 227 of Constitution of India, to set aside the fair and decreetal order, dated 02.06.2017 made in I.A.No.298 of 2016 in O.S.No.104 of 2008 on the file of the learned District Munsif Cum Judicial Magistrate, Thirumayam and to allow this Civil Revision Petition.

For Petitioner :Mr.G.Sridharan

For Respondent :Mr.A.Mohan

ORDER

This Civil Revision Petition has been filed by the revision petitioner to set aside the order, dated 02.06.2017 in I.A.No.298 of 2016 in O.S.No.104 of 2008 passed by the learned District Munsif Cum Judicial Magistrate, Thirumayam.

2.The parties are referred to as per the rank mentioned before the Court below.

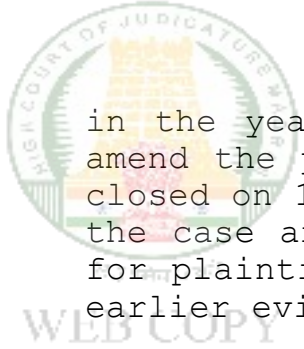
3.The plaintiff has filed a petition in I.A.No.298 of 2016 in O.S. No.104 of 2008 on the file of the learned District Munsif Cum Judicial Magistrate, Thirumayam, under Order 6 Rule 17 of Civil Procedure Code to amend the plaint. The said petition was dismissed on 02.06.2017. Aggrieved over the same, the revision petitioner is before this Court.

4.Heard on either side.

5.Seeking recovery of possession of the suit property is a consequential relief in stead of relief of permanent injunction and to mention in the revenue records in respect of the said survey number.

<https://hcservices.ecourts.gov.in/hcservices/>

6.Even in his petition the plaintiff has stated that the defendant has encroached the suit property and constructed a house



in the year 2011. But, the plaintiff has not taken any steps to amend the prayer till 2016. The defendant side evidence was also closed on 13.10.2011. The plaintiff has filed a petition to re-open the case and the same was also allowed and now the case was posted for plaintiff's further evidence on 27.07.2016, after eschewing the earlier evidence of P.W.2.

7. For recovery of possession time limit is three years. Eventhough, the petitioner has knowledge in the year 2011 he has filed the petition after five years which was barred by limitation.

8. The plaintiff has filed the petition for reopening the case in the year 2011. The plaintiff has categorically admitted in his affidavit that the plaintiff had demolished the house of the defendant and the defendant has also build the house and obtained Electricity Board connection and the said facts stated have stated in the original written statement filed on 10.07.2008. Even after knowing the facts he has not wait for till 2016, So, the relief sought in the amendment petition is barred by limitation.

9. In view of the foregoing reasons, the trial Court has rightly dismissed the petition. This Court has no valid reason to interfere with the order passed by the Court below.

10. Considering the facts and circumstances of the case and also considering the fact that the suit is of the year 2008, this Court directs the learned District Munsif Cum Judicial Magistrate, Thirumayam, to dispose the suit in O.S.No.104 of 2008, within a period of two months from the date of receipt of copy of the order.

11. With the aforesaid observations, this Civil Revision Petition is disposed of. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

ksa

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.



To

The District Munsif Cum Judicial Magistrate,
Thirumayam.

Copy to:

1 The Registrar(Judicial),
Madurai Bench of Madras High Court,
Madurai.

2 The Section Officer,
Judicial Section,
Madurai Bench of Madras High Court,
Madurai.(2 COPIES)

+1 CC to M/s.G. SRIDHARAN, Advocate (SR-16486[F] dated
05/04/2022)

Order made in
C.R.P. (MD) No.1673 of 2017
04.04.2022

SS/25.05.2022 : 3P/6C