



C.R.P.No.1043 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 13.04.2023

Delivered on 01.12.2023

CORAM:

The Hon'ble MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

C.R.P.No.1043 of 2020
and C.M.P.No.5680 of 2020

1.M.Krishnamoorthy
2.Tmt.Barathi
3.Manoj Kumar

...Petitioners/Respondents/Defendants

-Vs-

Tmt.Umavathy

...Respondent/Petitioner/Defendant

Prayer:-Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 31.10.2019 made in I.A.No.1 of 2019 in O.S.No.1672 of 2015 on the file of the learned I Additional District Munsif, Coimbatore.

For Petitioners : Mr.D.Ravichander

For Respondent : No appearance

ORDER

This Civil Revision Petition is filed to set aside the fair and decreetal order order dated 31.10.2019 made in I.A.No.1 of 2019 in



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O.S.No.1672 of 2015 on the file of the learned I Additional District Munsif, Coimbatore.

2.The Defendants in the suit in O.S.No.1672 of 2015 on the file of the learned I Additional District Munsif, Coimbatore, are the Revision Petitioners herein.

3.The Plaintiff in the suit in O.S.No.1672 of 2015 is the younger brother's wife of the 1st Defendant. She had instituted the suit, seeking relief from a permanent injunction against Defendants 1 to 3. Defendants 2 and 3 are the wife and son of the 1st Defendant.

4.As per the plaint averments in O.S.No.1672 of 2015 on the file of the learned I Additional District Munsif, Coimbatore, the property, Plot No.44, was purchased by the husband of the Plaintiff in his name, and they had been running a manufacturing unit in that Plot bearing the name M/s.U.T.N. Pumps and Motors, manufacturing Monoblock Pump Sets. After the filing of the suit, the Defendants, after entering their appearance through Counsel, filed Written Statement specifically denying the plaint



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5.It is the contention of the Defendants in the Written Statement that the property in Plot No.44, was purchased by the husband of the Plaintiff, who is the younger brother of the 1st Defendant, with the funds provided by the 1st Defendant. It is the further allegation in the Written Statement that the younger brother of the 1st Defendant was unemployed and that he was in the Village. The 1st Defendant had brought him to Coimbatore and appointed him as Supervisor of his pump manufacturing industry. The elder brother/1st Defendant, was running a manufacturing unit under the name and style of Manoj Industries [K.M.B. Pumps] in Plot No.45. Plot No.45 belonged to the elder brother; they were manufacturing the pumps in Plot Nos.44 and 45 as their own. While so, the 1st Defendant's younger brother, who had been appointed as Supervisor, had purchased the property with the funds provided by the 1st Defendant in the name of the younger brother. Subsequently, the younger brother of 1st Defendant, the husband of the Plaintiff, misappropriated funds from the Company which was found out by the elder brother/1st Defendant and he had preferred a complaint to the Police. Thereafter, the younger brother, through his wife had instituted



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the suit.

6. When the suit was pending, an *ex parte* Advocate Commissioner was appointed by the Plaintiff. The said Advocate Commissioner entered the premises of the K.M.B. Pumps, which was objected to by the Defendants. The *ex parte* Advocate Commissioner filed a Report before the Court stating that the Defendants prevented her from entering the property and filed a report to that effect. Subsequently, another Advocate Commissioner was appointed based on the objections raised by the Defendants. The two Advocate Commissioners visited the property and filed a Report to the Court. Subsequent to the filing of the Report by the 2nd Advocate Commissioner, the Plaintiff in the suit had filed I.A.No.1 of 2019 in O.S.No.1672 of 2015 under Order VI Rule 17 read with Section 115 of CPC to amend the plaint. The amendment sought for is with regard to amending the plaint averment stating that the 1st Advocate Commissioner visited the property, the Defendants prevented her from entering the property, and they forcefully removed the articles belonging to the Plaintiff and dispossessed the Plaintiff from the suit property. Therefore, the Plaintiff seeks relief of mandatory injunction.



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7.The Defendants, as Respondents in I.A.No.1 of 2019 in O.S.No.1672 of 2015, had vehemently objected to the Petition seeking amendment of the plaint, stating that the Plaintiff had filed the Amendment Petition more than four years after the alleged date of dispossession. Therefore, it is hit by limitation.

8.After due enquiry, ignoring the objections of the learned Counsel for the Respondents, the learned I Additional District Munsif, Coimbatore, allowed the amendment, stating that the pre-trial amendments had to be allowed leniently.

9.Aggrieved by the same, the 1st Defendant in the suit and the 1st Respondent in I.A.No.1 of 2019 in O.S.No.1672 of 2015 filed the Civil Revision Petition seeking to set aside the order of the learned I Additional District Munsif, Coimbatore, dated 31.10.2019.

10.The learned Counsel for the Respondent appeared before this



Court and sought time to file Vakalat. Till date, the Vakalat has not been filed. The Counsel on record before the Trial Court and the name of the Respondent are printed in the cause list.

11. Point for consideration:

Whether the order passed by the learned I Additional District Munsif, Coimbatore, allowing the I.A.No.1 of 2019 in O.S.No.1672 of 2015 dated 31.10.2019 is to be allowed or set aside?

12. On consideration of the submission of the learned Counsel for the Revision Petitioners, the amendment sought for is hit by limitation. The learned I Additional District Munsif, Coimbatore, had allowed the Petition in I.A.No.1 of 2019 in O.S.No.1672 of 2015 by order dated 31.10.2019. The amendment sought by the Plaintiff is based on the Advocate Commissioner's Report. It is a settled proposition of law that the Advocate Commissioner is incompetent to speak about possession, which is to be proved through the evidence of the parties to the suit through the procedures known to law and not through the Advocate Commissioner. The Plaintiff as Petitioner in I.A.No.1 of 2019 had invoked the report of the Advocate Commissioner to amend the prayer for recovery of



possession, particularly when the Defendants in the suit, the Revision Petitioners herein, had objected to the Commissioner's Report. Also, the amendment sought for is beyond three years, as per the averments in the Petition for amendment.

13.In the light of the above, the order passed by the learned Additional District Munsif, Coimbatore, observing that the amendment sought for is a pre-trial amendment and is to be allowed cannot at all be accepted as reasonable. It is to be set aside. Also, the Plaintiff having knocked on the Court to plead a specific case that the Plaintiff had filed the suit for bare injunction, seeks declaration of title and recovery of possession. The amendment is hit by limitation.

14.The point for consideration is answered in favour of the Revision Petitioners and against the Respondent.

15.In the result, this **Civil Revision Petition is allowed**, the order passed by the learned I Additional District Munsif, Coimbatore in dismissing I.A.No.1 of 2019 by order dated 31.10.2019 is set aside. No costs. Consequently, connected Civil Miscellaneous Petition is closed.



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Index : Yes/No

Speaking/Non-speaking order

Neutral Citation : Yes/No

SATHI KUMAR SUKUMARA KURUP, J.,

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To

The I Additional District Munsif, Coimbatore.

**Order made in
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