



C.R.P.No.3736 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.08.2023

CORAM

THE HONOURABLE MR.JUSTICE **V. LAKSHMINARAYANAN**

C.R.P.No.3736 of 2019
and C.M.P.No.24532 of 2019

Amirtham

.. Petitioner

VS

1.Kamala
2.Settu

.. Respondents

Petition filed under Article 227 of the Constitution of India against the fair and decreetal orders dated 14.10.2019 passed in I.A.No.1 of 2019 in O.S.No.42 of 2011 on the file of the District Munsif Court, Mettur.

For Petitioner : Mr.P.Mani

For Respondents : Mr.R.Venkatraman
for M/s.A.M.Esakkiappan

ORDER

This Civil Revision Petition arises against the order dated 14.10.2019 allowing the application in I.A.No.1 of 2019 in O.S.No.42 of 2011 on the file of the District Munsif Court, Mettur.



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2. O.S. No.42 of 2011 was presented by the respondents herein for permanent injunction and a caveat was filed in the year 2012. Thereafter, an advocate commissioner was appointed in the year 2019. Subsequently, an application was taken out for amending the plaint for the relief of declaration of title and for recovery of possession. The said application was resisted by the defendant on the ground that she had purchased the property in the year 1981 and therefore she had been in possession and enjoyment of the same for a considerable period.

3. Learned Trial Judge after considering the case of the plaintiffs/respondents allowed I.A. No.1 of 2019 permitting amendment of the plaint.

4. Heard Mr.P.Mani, learned counsel for petitioner and Mr.R.Venkataraman for Mr.A.M.Esakkiappan, learned counsel for respondents. I have carefully perused the records.

5. Mr.P.Mani, learned counsel for petitioner would contend that the amendment is barred by limitation because even as per the plaint, the plaintiffs had pleaded that the defendant had taken possession of the property three years before the presentation of the plaint in 2011 and therefore amendment filed in the year 2019



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is hopelessly barred by time.

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6. I cannot go into detail with respect to the period of limitation because that will affect the rights of the parties. Looking at it, prima facie, even plaint alleges that encroachment was made in 2008 and the amendment has been filed in the 2019 i.e., within a period of nine years from the date on which the alleged encroachment is said to have been made. Therefore, prima facie view of the matter is that the application is not barred by time.

7. Learned Trial Judge has left open the issue of limitation to be tried at the time of disposal of the suit. The finding of the learned Trial Judge is correct and it is upheld. Consequently, Civil Revision Petition is dismissed. No costs. Connected miscellaneous petition is closed.

25.08.2023

Index:Yes/No
Neutral Citation:Yes/No
mmi

To

The District Munsif Court,
Mettur.



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V. LAKSHMINARAYANAN,J.

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