



C.R.P (MD) No.389 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.06.2023

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.R.P(MD)No.389 of 2021

and

C.M.P.(MD)No.2116 of 2021

1.Vedamony
2.Gomathy
3.Alwyin

...Petitioners / Defendants

Vs.

“South Indian Assemblies of God” Church,
Rep. by
The present Southern District Superintendent,
J.Devadhason,
S/o. Joseph, Pastor,
Panankalai Mission Veedu,
Kaithakuzhi Post,
Vanniyoore Desam,
Vilavancode Taluk,
Kanyakumari District.

... Respondent / Plaintiff

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair order and decretal order dated 20.08.2019 passed in I.A.No.1 of 2019 in O.S.No.210 of 2011 on the file of the learned Subordinate Court, Padmanabhapuram, Kanyakumari District.

For Petitioner
For Respondents

: Mr.K.K.Senthil
: Mr.Raguvaran Gopalan



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ORDER

This Civil Revision Petition has been filed by the petitioner to set aside the impugned order dated 20.08.2019 passed by the learned Subordinate Judge, Padmanabhapuram, Kanyakumari District in I.A.No.1 of 2019 in O.S.No.210 of 2011.

2.By the impugned order, the learned Subordinate Judge, Padmanabhapuram, Kanyakumari District, has allowed I.A.No.1 of 2019 filed by the respondent in O.S.No.210 of 2011. Relevant portion of the impugned order reads as under:

“6.ON THE POINT:-

This Court considering the fact of case, the nature of the suit and for complete adjudication of the case with respect to suit property, inclined to allow this petition. However, the petitioner being the plaintiff should be clear about his case and should take all necessary steps to add all the necessary party, having failed to do so all these days this Court inclined to allow this petition on cost of Rs.3,000/- to be paid on 20.08.2019. On 20.08.2019, the petitioner complied the direction of this Court and paid the cost of Rs.3,000/- and so the petition is allowed.”

3.The petitioners are the defendants in O.S.No.210 of 2011 on the file of



the Sub Court, Padmanabhapuram. The respondent/plaintiff had filed O.S.No. 485 of 2008 for a declaratory relief and for an injunction to restrain the respondents from interfering with 30 cents of land, which was sold by late Paul Mathuranayagam in the year 1994. Later O.S.No.485 of 2008 was renumbered as O.S.No.210 of 2011.

4.It appears that parallel proceedings were initiated by the respondents as also by the third petitioner. The third petitioner had filed O.S.No.2 of 2009 claiming declaratory relief that out of an extent of 30 cents of land, 19 ½ cents was sold by Paul Mathuranayagam to the third petitioner. An extent of 19 ½ cents of land which was originally settled in favour of the third respondent in the year 1994 by late Paul Mathuranayagam, was cancelled by late Paul Mathuranayagam on 15.06.2007.

5.The respondent had filed I.A.No.37 of 2013 for amending the plaint in O.S.No.210 of 2011. I.A.No.37 of 2013 was allowed on 10.08.2017. Pursuant to order dated 10.08.2017, paragraph No.7a to the plaint was added to read as under :-

“After the death of the wife of Paul Marutha Nayagam the first defendant Gomathy who is also a member of this Church helped him in his household duties as he was old and sick. As such Paul Marutha Nayagam died on 15.02.2008 and



thereafter the plaintiff demanded her to vacate the house. The second defendant preferred a complaint before the Sub Inspector of Police Thuckalay and they both have made an endorsement before the Police that they both will not enter the house.

While so on 09.11.2012 the defendant along with her another son by name Sujin and another daughter Suja have trespassed in the mission house building with No:3/64 of Valvachagostam Town Panchayat by force. I have preferred a complaint before the Thuckalay Police and they have directed me to approach the civil court as the suit is pending. As such the plaintiff is entitle to get recovery of the plaint B schedule property from the defendants.”

6.Ideally the respondent / plaintiff should have filed an interlocutory application for impleading the parties namely Sujin and Suja under Order 1 Rule 10 of CPC immediately. However, it was delayed. Meanwhile, I.A.No.1 of 2019 was filed on 29.07.2019, which has now been allowed by the Sub Court, Padmanathapuram, vide impugned order dated 20.08.2019.

7.The impugned order is sought to be assailed in this Civil Revision Petition on the ground that I.A.No.1 of 2019 was filed on 29.07.2019 and allowed on terms but the respondent failed to comply with the terms of order dated 20.08.2019 and therefore I.A.No.1 of 2019 stood allowed, vide impugned order dated 20.08.2019.



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8.The impugned order passed by the learned Sub Judge in I.A.No.1 of 2019 is assailed by the petitioners primarily on the ground that the application for impleading the 2nd petitioner and her two children were belated although their names were available since 2008. Since there was a delay, the application ought not to have been allowed. That apart the impugned order is bereft of any reasoning and on this count, it is liable to be interfered with.

9.The learned counsel for the petitioners have drawn attention to Article 58 of the Limitation Act, 1963 to buttress the point that declaratory relief against the proposed party ought to have been filed within a period of three years from the date on which the right to sue first accrued and therefore, prayed the impugned order to be set aside.

10.Per contra the learned counsel for the respondent would submit that the impugned order is well reasoned and does not warrant any interference. It is submitted that only after the amendments were allowed on 10.08.2017 in I.A.No.37 of 2013, the question of impleading the proposed parties arose and therefore, the application was filed well within the time. That apart even otherwise the question of applying Article 137 of Limitation Act also will not arise in the light of the decision in the Division Bench rendered in the case of



D.D.R.Property Developers and Builders and others v. Deepti Integrated

Logistic Private Limited in O.S.A.No.294 of 2018, wherein in paragraph no.

12, it was held as under:-

“12.With regard to Article 137 of the Limitation Act, it speaks about the period of three years, if no limitation is prescribed and it is about independent proceedings and it would not be applicable to the application taken out in the pending proceedings viz., interim applications. Therefore, the said contention relying upon Article 137 of Limitation Act, will not hold good.”

11.Finally the learned counsel for the respondent would submit that the proposed party have trespassed in the suit after the suit was filed originally in O.S.No.485 of 2008 which was subsequently renumbered as O.S.No.210 of 2011. It is submitted that even if fresh cause of action arises, limitation under Section 65 stands preserved. There is no point in driving the parties to rush.

12.I have considered the learned counsel appearing for the petitioners and learned counsel appearing for the respondent.

13.The alleged trespass is during the pendency of the suit. The option available to the respondent would have been either to file a separate suit or amend the plaint. The respondent has chosen the latter option. Therefore, there



C.R.P (MD) No.389 of 2021

is no merits in the challenge to the Impugned Order allowing the application by the respondent under Order I Rule 10 of CPC to implead the 2nd petitioner and her children. The Court is merely adding parties to the proceedings.

14.That apart under Sub-Clause 5(2) of Order I Rule 10 of CPC, proceedings as against any person added as a defendant shall be deemed to have begun from the date of service of summons. Therefore, it cannot be argued by the petitioners that the application was allowed contrary to law.

15.There is no merits in the challenge to the impugned order. This Civil Revision Petition is liable to be dismissed. It is accordingly dismissed. No Costs. Consequently, connected Miscellaneous Petition is closed.

27.06.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

Mrn / krk



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C.R.P (MD) No.389 of 2021

C.SARAVANAN,J.

Mrn / krk

To

- 1.The Subordinate Judge,
Padmanabhapuram,
Kanyakumari District.
- 2.The Section Officer
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

C.R.P(MD)No.389 of 2021

27.06.2023