



C.R.P(MD)No.547 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **01.03.2023**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(MD)No.547 of 2023

and

C.M.P(MD)No.2602 of 2023

M.Mohamed Abbas

... Petitioner/Petitioner/
2nd Defendant

Vs.

1.S.Mohamed Yasin

2.S.Abuthahir

... Respondents/Respondents 1 & 2/
Plaintiffs 1 & 2

3.M.Jannathunisha

4.M.Dharmandiran

5.G.Babu

6.S.Anbu Kanna

7.Syed Mohamed Abuthahir

... Respondents/Respondents 3-7/
Defendants 1,3-5, Proposed
Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to call for the records relating to the I.A.No. 392/2022 in O.S.No.28/2013 on the file of the learned District Munsif,



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Peraiyur, Madurai District and to set aside the fair and decreetal order passed there in dated 13-02-2022 by rejecting the plaint in O.S.No.28 of 2013.

For Petitioner : Mr.Isaac Mohanlal
Senior Counsel
for Mr.C.M.Arumugam

ORDER

The present revision petition has been filed by the 2nd defendant in a suit for partition challenging an order dismissing an application under Order 7 Rule 11 of the Code of Civil Procedure.

2. Originally the suit was filed for permanent injunction in the year 2002. By way of an application for amendment, the prayer for declaration was incorporated in the plaint in the year 2012. The present application has been filed by the 2nd defendant in I.A.No.392 of 2022 for rejecting the plaint on the ground that the suit is barred by limitation and there is no cause of action for filing the present suit.

3. The learned trial Judge after considering the submissions made on either side has dismissed the application on the ground that when an application for amendment of plaint for inclusion of prayer for



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declaration of title was filed, the defendant has not chosen to file their counter. After a period of 9 years, the present application has been filed on the ground that the said prayer for declaration of title is barred by limitation. The learned Judge has also found that the issue relating to limitation being a mixed question of law and fact and already an issue has been framed in this regard, it is not necessary to go into the issue in an application under Order 7 Rule 11 of the Code of Civil Procedure. Challenging the said order, the present revision petition has been filed.

4. The learned senior counsel appearing for the petitioner has contended that the defendants in their original written statement have specifically disputed the title of the plaintiff. However, within a period of 3 years from the date of the said written statement, the prayer for declaration of title has not been sought for. Therefore, the inclusion of prayer for declaration of title in the year 2012 is clearly barred by limitation. When the issue of limitation is staring at the face of the plaint, the question of considering it as a mixed question of law and fact does not arise and the learned trial Judge ought to have considered the said plea in the application under Order 7 Rule 17 of Code of Civil Procedure itself without relegating the same to the trial. The learned senior counsel



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has further contended that the defendants have taken up another plea that there is no cause of action for filing the present suit. However, the trial Court has not considered the said plea in the order impugned in the present revision petition. Therefore, he sought for stay of further proceedings in the suit.

5. I have perused the original plaint, amended plaint and the order impugned in the revision petition.

6. Admittedly, the suit has been filed for a bare injunction in the year 2002 and the prayer for declaration of title was incorporated by way of an amendment in the year 2012. In the amendment application, the 2nd defendant has not filed any counter and thereafter, the said application has been allowed. Now, the present interlocutory application in I.A.No. 392 of 2022 has been filed under Order 7 Rule 11 on the ground that the inclusion of prayer for declaration of title in the year 2012 is barred by limitation. I am in agreement with the conclusion arrived at by the trial Court that the amendment application was not opposed and the amendment was allowed 9 years back. The trial Court has also rendered a finding that the issue relating to limitation has already been framed as



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one of the issues in the suit. Therefore, I do not find any infirmity or irregularity in the order of the trial Court relating to the plea of limitation. As far as the issue relating to cause of action is concerned, the defendants are at liberty to raise this issue at the time of trial. Therefore, all the issues raised by the defendant in Order 7 Rule 11 application are left open to be decided in the trial.

7. With the above said observation, this Civil Revision Petition stands disposed of. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

01.03.2023

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

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To

- 1.The District Munsif,
Peraiyur,
Madurai District
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR ,J.

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Order made in
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01.03.2023