



CRP (MD) No.1581 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	02.08.2023
Pronounced on	10.11.2023

CORAM:

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

CRP (MD) No.1581 of 2023
and
CMP(MD)No.7736 of 2023

Krishnammal (died)

1.Mr.Mohankumar

2.Vijayakumari

3.Gandhiramasubramanian

4.Sathiyaseelan

5.Sathiyasekar

... Petitioners

Vs.

Krishnasamy (died)

1.P.Murugesan

2.P.Arunachalam

... Respondents

PRAYER: Civil Revision Petition filed under Section 115 of Code of Civil Procedure, to set aside the judgment and decree dated 04.11.2020 passed in C.M.A.No.4 of 2018, on the file of the Principal Subordinate Court, Tenkasi,



CRP (MD) No.1581 of 2023

against I.A.No.607 of 2012 in O.S.No.68 of 2012 on the file of the Principal District Munsif Court, Shenkottai.

For Petitioners : Mr.R.J.Karthick

For Respondents : Mr.A.V.Saha

ORDER

The above civil revision petition is filed against the judgment and decree dated 04.11.2020 passed in CMA No.4 of 2018 by the learned Principal Sub Judge, Tenkasi, against the order passed in I.A.No.607 of 2012 in O.S.No.68 of 2012 on the file of the Principal District Munsif Court, Shenkottai.

2. According to the revision petitioners, the mother of the revision petitioners filed a suit in O.S.No.68 of 2012 on the file of the District Munsif Court, Shenkottai, for declaration of title and for injunction restraining the defendant or his agents from disturbing her peaceful possession in the suit property. The defendant entered appearance in the suit and filed his written



statement. Thereafter, the defendant filed I.A No.607 of 2012 in OS No.68 of 2012 to reject the plaint. On 30.09.2013, the trial Court allowed the said application, against which, the plaintiff preferred Civil Miscellaneous Appeal with condone delay application in I.A.No.2 of 2014 to condone the delay of four days in filing the civil miscellaneous appeal. On 08.09.2016, the said application was dismissed, against which, the plaintiff preferred CRP(MD)No.543 of 2018 and the same was allowed by this Court on 02.04.2018. Thereafter, the civil miscellaneous appeal was numbered as C.M.A.No.4 of 2018. However, the Court below by its judgment and decree dated 04.11.2020 dismissed the above civil miscellaneous appeal on the ground that the same is barred by limitation, since the suit was disposed of on 30.09.2019. Challenging the same, the present civil revision petition is filed.

3.The learned counsel for petitioners would submit that during pendency of C.M.A.No.4 of 2018, the plaintiff, namely, Krishnammal and the defendant, namely, Krishnasamy died. Hence, I.A.No.1 of 2019 and I.A.No.2 of 2019 were filed to implead their legal heirs and the said application filed in I.A.No.1 of 2019 to implead the legal heirs of the plaintiff was allowed.



However, the amendment was not carried out and when the same was posted for carrying out the amendment, the Court below erroneously closed the civil miscellaneous appeal. Moreover, the impleading petition filed on the side of the defendant was also kept pending. The Court below closed the appeal in C.M.A.No.4 of 2018, showing the death person, in the cause title. Hence, the impugned order passed by the learned Subordinate Judge, Tenkasi, is liable to be set aside.

4. Per contra, the learned counsel for the respondents would submit that the suit was disposed of on 30.09.2013 and therefore, the civil miscellaneous appeal is barred by limitation. The learned Subordinate Judge has rightly dismissed the appeal in C.M.A.No.4 of 2018 on the ground of limitation and therefore, the order passed by the learned Principal Subordinate Judge, Tenkasi, calls for no interference.

5. Heard on both sides and records perused.

6. The suit in O.S.No.68 of 2012 was filed by the plaintiff for



CRP (MD) No.1581 of 2023

declaration of title and permanent injunction. The defendant filed an application in I.A.No.607 of 2012 under Order 7 Rule 11 of CPC for rejection of plaint on the ground that the suit is barred by limitation. According to the defendant, on 09.01.2008, the plaintiff issued a legal notice by stating that the suit property belongs to her and that she is in possession and the enjoyment of the same, for which, the defendant issued a reply notice on 28.01.2008 stating that the suit property belongs to the defendant and he is in possession and enjoyment of the same. In spite of receipt of the said reply notice, in the year 2008 itself, the plaintiff did not file any suit against the defendant. Thereafter, the present suit in O.S.No.68 of 2012 was filed only on 05.07.2012, which is beyond the period of three years. The suit ought to have been filed within a period of limitation. Therefore, the defendant has filed I.A.No.607 of 2012 in O.S.No.68 of 2012 to reject the plaint on the ground that the suit is barred by limitation. The said petition was allowed on 30.09.2019, against which, the plaintiff filed civil miscellaneous appeal with condone delay application in I.A.No.2 of 2014 to condone the delay of 4 days in filing the CMA. The learned Principal Subordinate Judge, Tenkasi, dismissed the said petition in I.A.No.2 of 2014 on 08.09.2016. Challenging



the same, the plaintiff filed C.R.P.No.543 of 2018 before this Court and the same was allowed on 02.04.2018. Thereafter, the appeal was numbered as C.M.A.No.4 of 2018, which was dismissed by the Court below on 04.11.2020 stating that the CMA is barred by limitation, since the suit was disposed of on 30.09.2013. Challenging the same, the present civil revision petition is preferred.

7. As rightly pointed out by the learned counsel appearing for the revision petitioners that the trial Court erred in dismissing the civil miscellaneous appeal by stating that the same is barred by limitation. Since the condone delay application was allowed by this Court in C.R.P.No.543 of 2018, the trial Court ought not to have dismissed C.M.A.No.4 of 2018 on the ground that the same is barred by limitation. Therefore, the order dated 04.11.2020 passed in C.M.A.No.4 of 2018, on the file of Principal Subordinate Court, Tenkasi, is set aside and the matter is remitted back to the learned Principal Subordinate Judge, Tenkasi, for fresh consideration. The learned Principal Subordinate Judge, Tenkasi, is directed to dispose of C.M.A.No.4 of 2018 on merits and in accordance with law as expeditiously



CRP (MD) No.1581 of 2023

as possible, preferably, within a period of two weeks from the date of receipt of a copy of this order, after affording sufficient opportunity to both parties.

Accordingly, this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

10.11.2023

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

To

The Principal Subordinate Judge,
Tenkasi.



WEB COPY



CRP (MD) No.1581 of 2023

K.GOVINDARAJAN THILAKAVADI

cp

Pre-delivery order made in
CRP (MD) No.1581 of 2023

10.11.2023