



CRP (MD) No.1266 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on	23.08.2023
Pronounced on	15.09.2023

CORAM:

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

CRP (MD) No.1266 of 2021

and

CMP(MD)No.7275 of 2021

1.P.Ramamoorthy

2.A.Murugesan

... Petitioners

Vs.

1.Murugesan (died)

2.Palaniammal

3.The Tahsildar,
Thottiyam Taluk,
Trichy District.

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the order passed by the learned District Munsif in I.A.No.1 of 2020 claiming amendment of plaint in O.S.No.300 of 2007 on the file of the learned District Munsif, Musiri, dated 22.04.2021.

For Petitioners : Mr.Chamundi Bose



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For R2 : Mr.G.S.Asok Adhithyan
For R3 : Mr.G.Suriyananth
Additional Government Pleader

ORDER

The above civil revision is preferred by the petitioners/plaintiffs against the order in I.A.No.1 of 2020 in O.S.No.300 of 2007 on the file of the learned District Munsif, Musiri, dated 22.04.2021.

2. According to the revision petitioner, he filed a suit seeking permanent injunction against the respondents/defendants in O.S.No.300 of 2007 on the file of the District Munsif Court, Musir. In the said suit, the first defendant died on 04.05.2013, after filing the written statement on 08.04.2008. After his demise, an interlocutory application was filed in I.A.No.1230 of 2014 to implead his legal heirs as necessary parties to the suit. The said application was dismissed on 03.06.2016 as the suit was for mere injunction. Against the said order, the petitioner filed CRP(MD) No. 2527 of 2016 and the same was also dismissed. The revision petitioner again



filed an application in I.A.No.1 of 2020 seeking to amend the plaint on 20.12.2019 for the following reliefs:-

(a) to amend the prayer in the plaint as seeking declaration instead of permanent injunction

(b) The value of the suit property has to be amended from Rs.2000 to Rs.47,000/-.

(c) The value of the stamp duty be changed from Rs.151/- to Rs.1501.05 and few other corrections.

The said application was also dismissed stating that if there is any problem with the plaintiff and the legal heirs of the first defendant, a separate suit has to be filed. Since the second defendant has argued that the first defendant is the rightful owner, the amendment of plaint if allowed as prayed for, the purpose of amendment is lost. Aggrieved by the same, the present civil revision petition is preferred.

3. The learned counsel appearing for the revision petitioners would submit that by allowing the said amendment, it would not cause prejudice to the other side and on the other hand, if the said amendment is refused, it would cause grave injustice to the revision petitioner and would also lead to



multiplicity of proceedings. By including the relief of declaration of title in order to protect the interest of the petitioners/plaintiffs, the basic nature of the suit would not be changed as alleged by the defendants. To support his contentions, he has relied of the judgment of the Hon'ble Supreme Court in ***Abdul Rehman & Anr vs. Mohd.Ruldu & Ors.***

4. On the other hand, the learned counsel appearing for the second respondent would submit that the said amendment application, is barred by limitation. The plaintiffs by seeking an amendment to add a new relief in respect of the suit property after lapse of many years after filing of the suit, would amount to filing of a fresh suit beyond the prescribed period of limitation. He would further submit that the plaintiffs ought to have sought for declaration within three years, when the cause of action first accrued. To support his contention, he has relied upon the decisions reported in ***(2008) 15 SCC 610, (2004) 3 SCC 392 and 2022(3) MWN (Civil) 431.***

5. Heard on both sides and records perused.



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6. According to the revision petitioners, since it is mentioned in the written statement filed by the second defendant that without seeking the relief of declaration of title, the suit filed for bare injunction, is not maintainable, it has become necessary to include the prayer of declaration of title by way of amendment. On the other hand, the learned counsel for the second respondent/second defendant would submit that the suit was filed in the year 2007 and the written statement was filed in the year 2008, in which, the title of the plaintiffs was disputed. Thereafter, the present application for amending the plaint was filed in the year 2020, after lapse of 12 years. Therefore, the same is barred by limitation. Moreover, as per the direction of this Court in CRP(MD) No.2527 of 2016, it is always open to the revision petitioner to institute a fresh suit against the legal representatives of the first defendant and it is not necessary to include the prayer of declaration in the present suit, which is filed only for bare injunction. Further, it is stated that the said amendment is barred by limitation.



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7. Admittedly, it is a suit for bare injunction filed by the revision petitioners/plaintiffs in the year 2007 and in the written statement filed by the first defendant in the year 2008, it is mentioned that the title of the plaintiffs in the suit property is disputed. However, the present application for including the prayer of declaration of title by way of amendment, is filed only in the year 2020. The right to sue for declaration of title first arose on the facts of the present case in the year 2008 itself, when the original written statement clearly denied the plaintiffs title. Therefore, a suit based on declaration of title would have become time barred. It is clear that the doctrine of relation back would not apply to the facts of this case for the reason that the said amendment petition ought to have been filed within a period of three years, when the defendants had filed their written statement in the year 2008, especially, a legal right that had accrued in favour of the defendants cannot be taken away. If the present application for amendment is allowed, it would amount to a fresh suit filed beyond the prescribed period of limitation.



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8. For the foregoing reasons, the order passed by the trial Court is

confirmed and the Civil Revision Petition is dismissed. No costs.

Consequently, connected miscellaneous petition is closed.

15.09.2023

NCC : Yes/No

Index : Yes/No

Internet : Yes

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To

1.The District Munsif,
Musiri.

2.The Tahsildar,
Thottiyam Taluk,
Trichy District.



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K.GOVINDARAJAN THILAKAVADI

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