



C.R.P.(MD).No.195 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 21.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

C.R.P.(PD)(MD)No.195 of 2018

and

C.M.P(MD) No.837 of 2018

- 1.D.Justin Robin
2. J.Kiruba Robin Bernad

... Petitioners/Respondents 1 and 5
Defendants 1 and 5

-VS-

1. F.Wilfred
2. F.John Christopher
3. F.Mary Roselin
4. F.Mercy Joan
5. F.Stanley Jones

... Respondents 1 to 5/Petitioners 1 to 5/
Plaintiffs 1 to 5

6. F.Edwin David
7. F.Mary Sheela
8. F.Jeya Seelan

... Respondents 6 to 8/ Respondents 2 to 4/
Defendants 2 to 4

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the judgment and decree dated 04.08.2017 made in I.A.No.251 of 2017 in O.S.No.17 of 2007 on the file of the Principal District Munsif Cum Judicial Magistrate, Eraniel.



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For Petitioners : Mr.S.C.Herold Singh

For Respondents : Mr.M.P.Senthil

ORDER

The present Civil Revision Petition has been filed by the petitioners under Article 227 of the Constitution of India, against the judgment and decree dated 04.08.2017 made in I.A.No.251 of 2017 in O.S.No.17 of 2007 on the file of the Principal District Munsif Cum Judicial Magistrate, Eraniel.

2. The petitioners herein are the defendants 1 and 5, the respondents 1 to 5 herein are the plaintiffs and the respondents 6 to 8 are the defendants 2 to 4 before the Court below.

3. For the sake of convenience, the parties will be referred to as per the litigative status before the trial Court.

4. The short facts which give rise to the instant Civil Revision Petition are that the respondents 1 to 5/plaintiffs have filed the suit for the relief of declaration in respect of the “B” schedule property and recovery of possession. Initially, in the suit, *ex parte* decree was passed and subsequently,



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by filing an appeal, the same has been set aside and the case was remitted back for fresh trial. While so, it appears that the plaintiffs have filed an application to implead the 5th defendant. After impleading the 5th defendant, it appears that she has filed a statement. Wherein, she has contended about the settlement deed which was registered on 28.02.2007. After that plaintiffs filed an application to amend the prayer so as to include the relief of declaration to set aside such settlement deed. The Court below allowed the application. Aggrieved with the order, the instant Civil Revision Petition has been filed.

5. The learned counsel for the petitioners would vehemently submit that in the affidavit, the petitioners did not say as to when they came to know about the settlement deed dated 28.02.2007, and he would further submit that since the settlement deed is of the year 2007, the very filing of an amendment application after the period of almost 17 years is barred by limitation. He would further submit that, if any amendment application is allowed, the nature of the suit would be changed. Hence, he prayed to allow this Civil Revision Petition.



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6. However, the learned counsel appearing for the respondents/ plaintiffs would submit that they came to know about the settlement deed only after impleading the 5th defendant, and the impleadment took place only during the year 2015. He would further submit that they have filed an application for amendment within three years from the date of knowledge. Therefore, the amendment application has been filed within the period of limitation and he prayed to dismiss the Civil Revision Petition.

7. This Court has given anxious consideration to the submissions of the learned counsel on either side.

8. The crest and trough of the defence put forth by the learned counsel appearing for the petitioners is that the very amendment is beyond a period of three years. But, in the facts and circumstances of the case, this Court could not find any material so as to arrive at a conclusion, that the amendment application was filed after the period of three years. What this Court could see from the affidavit and the amendment application is that they came to know about the document only during the impleadment of the 5th defendant, which



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had happened during 2015. In such circumstances, within two years qua during 2017, they moved an application for amendment.

9. Taking into consideration the above aspects, the Court below has arrived at a conclusion that such an amendment can be allowed. This Court could not find any infirmity in the order passed by the Court below. Therefore, this Civil Revision Petition is **dismissed**. However, the petitioners are at liberty to take up the defence of limitation in respect of the prayer for declaration regarding the settlement deed. There shall be no order as to costs. Consequently connected Miscellaneous Petition is closed.

21.08.2023

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

1. The Principal District Munsif Cum Judicial Magistrate,
Eraniel.



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C.KUMARAPPAN,J.

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