



C.R.P(MD)No.2259 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.09.2023

CORAM

THE HON'BLE MRS JUSTICE K. GOVINDARAJAN THILAKAVADI

C.R.P(MD)No.2259 of 2023

and

C.M.P(MD)No.11597 of 2023

1.Balakrishnan

2.Logumani

3.Mayandi

4.Vanitha

5.Parthiban

6.Padmarani

... Revision Petitioners

Vs.

Rukmani (died)

Padmavathi (died)

Thiruveni (died)

1.R.Sudha Vasudevan

2.R.Vaidegi Kalayanasundaram

3.R.Venkatanarashimman

4.Vembu Ramesh Kumar



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5.R.Sathiya Baskhar

6.Pari

7.Bharani

8.D.Soundharam

9.Latchumi Narashimman

10.S.Rosilini

... Respondents

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order dated 13.07.2023 passed in E.A.No.04 of 2023 in E.P.No.52 of 2006 in O.S.No.31 of 1996 (on the file of District Munsif court Aundipatti).

For Petitioner : Mr.N.Vallinayagam

For Respondents : Mr.B.Rajesh Saravanan

ORDER

This Civil Revision Petition is preferred as against the order dated 13.07.2023 passed in E.A.No.04 of 2023 in E.P.No.52 of 2006 in O.S.No.31 of 1996 on the file of District Munsif Court Aundipatti.



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2. According to the Revision Petitioners, the above said suit in O.S.No.31 of 1996 was filed by the respondents/plaintiffs for the relief of redemption of mortgage, execution of discharge receipt and for delivery of the possession and the suit was decreed in favour of the plaintiffs, against which, the present petitioners/defendants preferred Appeal Suit in A.S.No.14 of 1998 and the same was dismissed on 19.08.2005. Thereafter, the respondents/plaintiffs filed E.P.No.52 of 2006 for execution of the decree. During the execution proceedings, the respondents/plaintiffs took out an application in E.A.No.4 of 2023 to amend the Execution Petition by including the prayer of redelivery of the suit property. The said application was allowed by the Executing Court. Aggrieved by the same, the petitioners/defendants preferred the said revision by stating that the said relief sought by the respondents / plaintiffs is barred by law of limitation and therefore, the trial Court ought not to have allowed the said amendment petition.

3. The learned counsel appearing for the Revision Petitioners would submit that despite Article 136 of the Limitation Act, the respondents / plaintiffs ought to have sought delivery of the property



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within a period of 12 years from the date of decree i.e. on 21.01.1997 and as such, 12 years period has expired on 20.01.2009. The learned counsel further submits that since the petitioners/defendants have acquired right by bar of limitation, if the amendment is allowed, it would defeat the right accrued by the petitioners/defendants. To support his contention, he relied upon the decision reported in ***AIR 1996 Supreme Court 2358 in Radhika Devi Vs. Bajrangi Singh and Others.***

4. On the other hand, the learned counsel appearing for the respondents / plaintiffs would submit that the respondents/plaintiffs have already filed an Execution Petition to execute the decree passed by the Court below and inadvertently, in the execution petition, prayer for redelivery of properties was omitted and therefore, it has become necessary for the respondents/plaintiffs to file an application for amendment by including the prayer of redelivery of property which was decreed in the suit.

5. He would further contend that by including the said prayer, no prejudice would be caused to the other side and he would



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further contend that the said prayer can be added even after lapse of 12 years disregarding the provisions of Section 48 of the Civil Procedure Code. To support his contention, he relied on the decision reported in ***Bhoganadham Seshaian Vs. Budhi Veerabhadrayya (died) and others*** in AIR 1972 Andhra Pradesh 134, in which, it is held as follows :

"The learned Judges thought that the main issue and the only question involved in the appeal is "whether the amendment by including a new prayer, which was tantamount to a fresh execution petition, could be ordered after 12 years disregarding the provisions of Section 48 of the Civil Procedure Code"."

6. The learned counsel would further contend that since during the pendency of the appeal suit, the first plaintiff died, it is necessary to implead his legal heirs in the suit. Therefore, because of the pendency of the appeal suit and death of one of the plaintiffs, the delay has occurred.



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7. Heard the learned counsel appearing for the petitioner and perused the materials available on record.

8. On perusal of the order passed by the Executing Court, it is seen that the Executing Court has categorically given a finding that since the execution petition was filed in time and the prayer sought to be included is not barred by limitation. There is no infirmity in the findings given by the Executing Court. The decision referred to by the learned counsel for the respondents is squarely applicable to the facts of the case on hand. Therefore, there is no infirmity found in the order passed by the Executing Court and the order of the trial Court order is confirmed.

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

05.09.2023

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

RM



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- 1.The District Munsif,
District Munsif court,
Aundipatti.
- 2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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K.GOVINDARAJAN THILAKAVADI, J.

RM

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