



C.R.P(MD)No.1266 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **12.07.2023**

CORAM

THE HON'BLE MR.JUSTICE C.KUMARAPPAN

C.R.P(MD)No.1266 of 2018

and

C.M.P(MD)No.5335 of 2018

P.Paul

...Revision Petitioner/
Petitioner/Plaintiff

Vs.

Backiyam (Died)

Shanmugam (Died)

1.Murugesan

2.Muthuraj

3.Velammal

...Respondents/Respondents/
Defendants

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for the records pertaining to the order passed by the learned District Munsif Court, Vilathikulam, Tuticorin District in I.A.No.112 of 2016 in O.S.No.44 of 2010 dated 06.04.2018 and set aside the same as illegal.

For Petitioner : Mr.C.M.Arumugam

For Respondents : No Appearance



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ORDER

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This civil revision petition has been filed against the order passed by the District Munsif Court, Vilathikulam, Tuticorin District in I.A.No. 112 of 2016 in O.S.No.44 of 2010, dated 06.04.2018.

2. The said suit has been filed by the petitioner/plaintiff for the relief of declaration and permanent injunction. In the suit, based upon the commissioner's report, he filed an application for amendment in I.A.No. 112 of 2016, for the relief of mandatory injunction, to remove the encroachment, as found in the commissioner's report.

3. The respondents/defendants filed a counter statement objecting the amendment application on the ground that the amendment sought for is hit by the limitation.

4. After hearing both sides, the learned Trial Judge has dismissed the amendment application on the ground of limitation. Aggrieved with the order, the petitioner has come up with this instant application.

5. The learned counsel for the petitioner vehemently submits that amendment sought for is in respect of removal of encroachment and for



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possession. He would further submit that dismissal order by the Trial Court on the ground of limitation is not a proper course as the issue of limitation is a question of fact and law. Therefore, he prayed to allow this civil revision petition.

6. Despite the name being printed in the cause list, there is no representation on behalf of the respondents.

7. I have given my anxious consideration to the submission of the learned counsel for the petitioner, to the effect that the very issue of limitation is mixed question of fact and law, therefore, the same cannot be decided at the interlocutory stage, without evidence. At the same time, the learned counsel for the petitioner fairly concedes that the very amendment is based upon the findings of the Commissioner's report, dated 20.08.2011. From the perusal of the records, the report was filed during 2012.

8. It is pertinent to mention here that, as per Article 113 of the Limitation Act the suit for mandatory injunction should be filed within a period of 3 years from the date of cause of action. As per the Commissioner's report, the so called encroachment took place on



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20.08.2011. Therefore, the long delay of more than 3 years taken by the petitioner to file the amendment application would make the petitioner not entitled for the relief of amendment in the plaint on the ground of limitation.

9. In the result, this civil revision petition stands **dismissed**. No costs. Consequently, connected miscellaneous petition is closed.

12.07.2023

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

1.The District Munsif Court,
Vilathikulam, Tuticorin District

2.The Section Officer
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.KUMARAPPAN,J.

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