



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.09.2023

CORAM

THE HONOURABLE MR.JUSTICE **R.VIJAYAKUMAR**

C.R.P.(MD)No.1647 of 2017

and

C,M.P.(MD)No.9199 of 2017

Narayanan

....Petitioner

Vs

H.P.Satheesh

represented by his General Power Agent,

N.Devarajan

...Respondent

PRAYER: The Civil Revision Petition has been filed under Article 227 of Constitution of India to set aside the fair and decreetal order dated 18.01.2017 in I.A.No.1074 of 2016 in O.S.No.212 of 2009 on the file the District Munsif, Kulithalai.

For Petitioner	:Mr.K.Govindarajan
For Respondent	:Mr.N.Shanmugaselvan



WEB COPY

ORDER

The defendant in O.S.No.212 of 2009 on the file of the District Munsif Court, Kulithalai, is the Revision Petitioner herein.

2.The respondent herein, as plaintiff, had filed O.S.No.212 of 2009 on the file of the District Munsif Court, Kulithalai, for permanent injunction. The defendant had filed a written statement on 23.07.2010 disputing the title of the plaintiff. Thereafter, the plaintiff had filed I.A.No.1074 of 2016 on 03.11.2016 seeking leave of the Court to amend the prayer in the plaint to include the prayer for declaration of title.

3.The defendant had raised an objection that the amendment would drastically change the cause of action and the amendment application has not been filed within a period of three years from the date of filing of the written statement. The Trial Court has allowed the application on the ground that the defendant having disputed the title of the plaintiff, the plaintiff was constrained to amend the plaint. Challenging the said order, the present Revision Petition has been filed.



WEB COPY

4. According to the learned Counsel for the Revision Petitioner/Defendant, in the counter, the defendant had raised an objection with regard to the fact that the amendment application is barred by limitation. Though the defendant had disputed the title of the plaintiff way back in July 2010, the plaintiff has chosen to file the amendment application only in November 2016. In view of Article 58 of the Limitation Act, 1963, the prayer for declaration of title should be sought within a period of three year from the date on which, the right to sue accrued. In the present case, the right to sue to the plaintiff accrued in July 2010 and amendment application to introduce the prayer for declaration of title having been filed in November 2016 is clearly barred by limitation.

5. Per contra, the learned Counsel for the respondent had contended that the plaintiff had filed the suit for permanent injunction. The defendant in his written statement had admitted the plaintiff's possession and sought a counter claim for recovery of possession. It is clear that the defendant had admitted the possession of the plaintiff. When the defendant has admitted the possession of the plaintiff in the suit property, he would not lose title within a period of three years from the date on which, his title is



questioned. Hence, the Trial Court was right in allowing the application for amendment.

6.I have carefully considered the submissions made on either side and perused the material records.

7.The possession of the plaintiff in the suit schedule property is admitted by the defendant by filing a counter claim seeking recovery of possession. Where the plaintiff is in possession of the property, he will not lose title within a period of three years from the date on which, his title is questioned.

8.That apart, Article 58 of Limitation Act, 1963, is applicable only to the suits relating to declaration, which are not connected with immovable properties. The limitation period for all the suits relating to the immovable properties are covered by Part-V of the Limitation Act covering Articles 61 to 67. Therefore, the contention of the learned Counsel for the Revision Petitioner that Article 58 of Limitation Act, 1963, falling under Part-III would be applicable to the facts of the case is not



WEB COPY

legally sustainable. The Trial Court has rightly allowed the application for amendment of the prayer to incorporate a prayer for declaration of title.

9. With these observations, this Revision Petition is dismissed. Considering the fact that the suit is of the year 2009, the Trial Court is directed to dispose of the suit on or before 31.03.2024. It is open to the defendant to raise all defences by filing additional written statement. No costs. Consequently, connected miscellaneous petition is closed.

08.09.2023

Index : Yes/No

Internet : Yes/No

cmr

To

1. The District Munsif, Kulithalai.

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

R.VIJAYAKUMAR, J.

cmr



WEB COPY



C.R.P.(MD).No.1647 of 2017

08.09.2023