



C.R.P.(MD)No.2244 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 12.07.2023

Delivered on : 07.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

C.R.P.(MD)No.2244 of 2017

and

C.M.P.(MD)No.10940 of 2017

K.Kaliyappan (Died)

1.P.Aayeeyappa Gounder

2.P.Aviyappan

3.K.Sellammal

4.K.Sellamuthu @ Sellakumar

5.K.Saravanakumar

6.P.Nallasamy

... Petitioners 1 to 6/ Petitioners 2 to 7/
Plaintiffs 2 to 7

7.Kuppathal

8.K.Shanmugavel

9.K.Poovendan

... Petitioners 7 to 9/
Proposed Plaintiffs 8 to 10

Vs.

1.K.Kuppusamy

2.K.Pasupathi

3.K.Selvakumar

... Respondents / Respondents /
Defendants



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Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order, dated 31.07.2017, passed in I.A.No.263 of 2016 in O.S.No.20 of 2012, on the file of the District Munsif Court, Oddanchatram.

For Petitioners : Mr.M.P.Senthil

For Respondents : Mr.H.Lakshmishankar

ORDER

The instant Civil Revision Petition has been filed against the order, dated 31.07.2017, passed in I.A.No.263 of 2016 in O.S.No.20 of 2012, on the file of the District Munsif, Oddanchatram.

2. For the sake of convenience, the parties are referred to according to their litigative status before the trial Court.

3. Short facts which give rise to the instant Revision Petition, are as under:

The revision petitioners are the petitioners / plaintiffs before the Court below. They filed a suit for the relief of declaration and injunction in respect of pathway. In which, they have also filed an application for appointment of Commissioner. According to the petitioners, when the



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Commissioner visited the property, they came to know about encroachment of the pathway to an extent of 8 feet. In this regard, they wanted to have an amendment for the removal of such encroachment. Hence, filed an amendment application.

4. The respondents / defendants have filed the counter statement denying such encroachment, and it is the case of the defendants / respondents that there is no pathway in their land, and the portion of the alleged pathway is their patta land. Therefore, they would object the application and also would contend that the alleged amendment is hit by the limitation.

5. The learned trial Judge, after considering the submission of either side, has ultimately dismissed the application on the ground that, the very amendment is barred by limitation, and also found that there is no encroachment by the respondents as they had been doing agricultural operation near the pathway.

6. The learned counsel for the petitioners would submit that the very dismissal order passed by the learned trial Judge, on the ground of



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limitation, could not be accepted at all, as the encroachment is a continuous cause of action. It is also the submission of the learned counsel for the petitioners that the very question of limitation is a mixed question of law and facts. Hence prayed to allow the amendment, by allowing this Revision Petition.

7. Per contra, the learned counsel for the respondents would invite the attention of this Court about the Commissioner Report and would submit that from the date of the Commissioner's Report, the amendment application is beyond the period of 3 years. Therefore, the very amendment sought for, is contrary to the Article 113 of the Limitation Act. Hence, prayed to dismiss this Revision Petition, by confirming the order of the Court below.

8. I have given my anxious consideration to either side submissions.

9. It is an admitted fact that the Commissioner has visited the suit property on 24.01.2012. After his visit, it appears that he filed a report on



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08.06.2012. While perusing the affidavit, in Paragraph - 3, it manifest the date of knowledge about the encroachment. The same indicates that the petitioners derive knowledge through the Commissioner's Report. In this case, the date of filing of this amendment application, is 14.03.2016, admittedly after a period of three years from the date of Commissioner's Report.

10. As per Article 113 of the Limitation Act, any suit for the relief of mandatory injunction, should be filed within a period of three years from the date when the right to sue accrues. For easy reference, Article 113 of the Limitation Act, extracted as follows:-

Section	Description of suit	Period of limitation	Time from which period begins to run
113.	Any suit for which no period of limitation is provided elsewhere in this Schedule.	Three years	When the right to sue accrues.

11. The learned counsel for the petitioners would rely upon a judgment of this Court reported in **2018-5-LW-629 (G.Sasikumar V. Manickavasagam)**, and would submit that when subsequent development happen, the plaint needs to be amended. He would also rely upon another judgment of this Court reported in **2020-3-CTC-715 (K.Ganesan V. Joint**



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Family rep. by its Manager) and would contend that when a fence was made during the pendency of the suit, amendment for mandatory injunction may be allowed.

12. This Court has absolutely no grievance in respect of the above precedents. But, the issue before us is whether such amendment can be made after the period of limitation as provided under Article 113 of the Limitation Act. Here, in this case, the right to sue or the cause of action for filing amendment application has arisen to the plaintiff on the date of filing of the Commissioner's Report, which factum is unequivocally admitted by the petitioner in his affidavit filed along with the application. Therefore, the petitioners are expected to file an application for amendment within three years from the date of his knowledge.

13. At this juncture, the learned counsel for the petitioners would strenuously urge before this Court that, the encroachment upon the pathway is a continuous cause of action. Therefore, question of limitation will not be applicable for their amendment. However, this Court is not persuaded with the submissions made by the learned counsel for the petitioners.



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14. During the hearing of this revision petition, both side counsels' submitted the Commissioner's Report, for the perusal of this Court. As per the Commissioner's Report, the plaintiffs were present at the time of Commissioner's visit. As per the Rough Sketch annexed with the Commissioner's Report, there exist 8 feet pathway at the starting point of the pathway. According to the petitioners, even after the filing of the Commissioner's Report, there was a further encroachment of another 3 feet. Therefore, would contend that under Section 22 of the Limitation Act, at the worst they are entitled to seek removal of encroachment, of an extend of 3 feet.

15. From the narration of the above disputed facts, this Court is not in a position to decide the issue of limitation precisely. Further, considering the peculiar circumstances of the case, the issue of limitation could only be effectively decided after letting in evidence as it is mixed question of law and fact. Hence, this Court is of the view that instead of curtailing the amendment at the very threshold, in order to adjudicate the issue in respect of the limitation and other aspect, this Court deem it



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appropriate to allow the application, by relying the judgment of the Hon'ble Supreme Court reported in ***AIR-2008-SC-1960 (Puran Ram V. Bhaguram and another)***. The relevant portion of the judgment is as follows-

“15. Before parting with this judgment, we may deal with the submission of the learned counsel for the respondent that the application for amendment could not be allowed inasmuch as the same was barred by limitation. We are unable to accept this contention of the learned counsel for the respondents. In this regard, we may observe that the court may, in its discretion, allow an application for amendment of the plaint even where the relief sought to be added by amendment is allegedly barred by limitation. This view was also expressed by this Court in Pankaja & Anr. Vs. Yellappa (Dead) by LRs. & Ors. [(2004) 6 SCC 415]. In that decision, it was held that there is no absolute rule that in such a case, the amendment should not be allowed and the discretion of the court in that regard depends on the facts and circumstances of the case and such discretion has to be exercised on a judicious evaluation thereof. It was further held in that decision that an amendment, which subserves the ultimate cause of justice and avoids further litigation, should be allowed. It is well settled by a catena of decisions of this Court that allowing and rejecting an application for amendment of a plaint is really the discretion of the Court and amendment of the plaint also should not be refused on



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technical grounds. In this connection reliance can be placed on a decision of this court in Jai Jai Ram Manohar Lal Vs. National Building Material Supply, Gurgaon [AIR 1969 SC 1267]. In paragraph 8 of the said decision this Court observed that "since the name in which the action was instituted was merely a misdescription of the original plaintiff, no question of limitation arises; the plaint must be deemed on amendment to have been instituted in the name of the real plaintiff on the date on which it was originally instituted." A reading of this observation would amply clear the position that no question of limitation shall arise when mis- description of the name of the original plaintiff or mis-description of the suit property arose in a particular case. Apart from that in the present case, although, the relief claimed before as well as after the amendment remained the same i.e. a decree for specific performance of the contract for sale, even then, in the facts and circumstances of the present case, as noted herein earlier, we do not find why the High Court should have interfered with the discretion used by the trial court in allowing the application for amendment of the plaint."

(Emphasis supplied by this Court)

16. While applying the above ratio to the facts of this case, though a relief of mandatory injunction is sought for, for the removal of



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6 feet encroachment after the period of three years from the date of the Commissioner's Report, the petitioners have also stated about the subsequent encroachment after the filing of the Commissioner's Report. If the amendment sought for in respect of the mandatory injunction is denied on the ground of limitation, it become impossible to decide the alleged further encroachment. Therefore, in order to adjudicate the issue in a comprehensive manner, this Court deem it appropriate to allow the amendment as prayed for. However, the question of limitation will be considered by the Court below during the trial subject to the rigours of the Limitation Act.

17. In the result, the instant Civil Revision Petition stands **allowed** as indicated above. There shall be no order as to cost. Consequently, connected Miscellaneous Petition is closed.

07.09.2023

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

- 1.The District Munsif Court,
Oddanchatram.
- 2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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C.KUMARAPPAN.,J.

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Pre-delivery Order made in
C.R.P(MD)No.2244 of 2017

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