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C.R.P. No.3544 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.07.2024

CORAM

THE HONOURABLE Mr. JUSTICE P.DHANABAL

C.R.P. No.3544 of 2022

and C.M.P. No.18859 of 2022

D.M. Shankar S/o. Muthusubramaniam Achari ...Petitioner / Petitioner /
Plaintiff

Vs.

1. M.D. Selvam S/o. Late Duraisamy Achari
2. S. Vanitha W/o. M.D. Selvam
3. Gokulakannan S/o. M.D. Selvam Respondents / Respondents /
Defendants

PRAYER: Civil Revision Petition is filed under section 227 of the Constitution of India, to set aside the fair and decreetal order passed by the District Munsif Court, Dharmapuri made in I.A. No.165 of 2020 in O.S. No.193 of 2014 dated 01.12.2021.

For Petitioners : Mr. M. Jayachandran

For Respondents : No appearance.

ORDER

The Civil Revision Petition is filed by the petitioner challenging the order passed in I.A. No.165 of 2020 in O.S. No.193 of 2014 on the file of



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District Munsif Court, Dharmapuri, wherein the petitioner has filed a petition to amend the plaint and the same was dismissed by the Trial Court.

Aggrieved by the said order, the present civil revision petition has been filed.

2. According to the petitioner, he filed a main Suit for relief of permanent injunction. The defendants filed written statement by denying the title of the petitioner, thereby he filed a petition to amend the plaint for the prayer of declaration and recovery of possession. The respondents have also encroached a portion of the property and thereby, he sought for relief of declaration and recovery of possession. The trial Court dismissed the amendment application on the ground that the petition is barred by limitation, since declaration has to be filed within the period of 3 years under Section 58 of Limitation Act. But the prayer is not only for declaration, it is also for recovery of possession and thereby, as per Article 65 of Limitation Act, the limitation period is 12 years. The Trial Court failed to consider the same and the order passed by the Trial Court is liable to be set aside.

3. No representation for the respondents. Already notice served on them and the name of the respondents also printed in the cause list. But none appeared.

4. The respondents have filed a counter before the Trial Court that the



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petition is not maintainable. Already decree has been passed in O.S. No.83 of 2015 dated 19.06.2017 and execution proceedings also pending in E.P. No.10 of 2020. Without contesting the above said suit, the petitioner has filed this petition seeking amendment for mandatory injunction. Therefore, the petition is liable to be dismissed.

5. Before the Trial Court, no oral or documentary evidence adduced on either side. The Trial Court after hearing both sides, dismissed the application.

6. The learned counsel appearing for the petitioner would contend that the petitioner is the Plaintiff in the main Suit. Initially he filed a Suit for the relief of permanent injunction and the respondents also filed written statement by denying the title of the petitioner and further they have encroached the property of the petitioner and thereby, the petitioner filed a petition for amendment of plaint in respect of the prayer for declaration and recovery of possession and for mandatory injunction. The Trial Court dismissed the application on the ground of limitation, but the limitation issue has to be decided after full trial for the purpose of determining the real question in controversy between the parties. It is the matter to be decided by the Trial Court. At the stage of amendment application, the Court cannot decide the



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limitation point. Even for recovery of possession, the limitation period is 12 years. The Trial Court failed to consider the same. Therefore, the order of the Trial Court is liable to be set aside.

7. Heard petitioner side and perused all the materials available on record.

8. The Plaintiff has filed the main Suit for the relief of permanent injunction and after filing written statement by the respondents, he filed a petition to amend the prayer in the plaint for the relief of declaration and recovery of possession and for mandatory injunction. The Trial Court dismissed the petition on the ground that the petition is barred by limitation and also the petitioner has not filed any documents to show that the property was encroached by the respondents.

9. This Court perused the records carefully. In the amendment petition, the petitioner has prayed for relief of declaration and recovery of possession and also for mandatory injunction. The petitioner also paid Court Fee under Section 25(a) of Tamil Nadu Court-Fees and Suits Valuation Act, 1965, which shows that the petitioner prayed for declaration and recovery of possession.

But the Trial Court failed to consider the same and passed an order that the



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limitation for relief of declaration is 3 years, but failed to consider the prayer of recovery of possession. The limitation issue can be decided after full trial. Therefore, at the stage of amendment application, the Trial court need not go into that aspect.

10. At this juncture, the learned counsel appearing for the petitioner relied upon judgment in ***Thangaraj and another vs. Chinnammal reported in 2019 (3) T.N.C.J. 1031 (MAD)***, wherein this Court held in para no.7 as follows:-

"7. The petitioners have filed the application for amendment within the prescribed period as per Article 65 of the Limitation Act, as only on Aug 2004, the respondent has disputed the claim of the petitioners that they are in possession of the Suit schedule property. It is also submitted by the learned counsel for the petitioners that the trial is yet to be commenced in the suit and the application for amendment was filed only before commencement of trial. All these factors ought to have been considered by the Trial Court before dismissing the application I.A. No.1046 of 2011 in O.S. No.517 of 2004. The limitation issue, in the instant case, being a debatable issue, the Trial Court ought to have allowed the amendment application and decide the limitation issue one way or the other only after trial".

On careful perusal of the above judgment, it is clear that the limitation period for declaration and for recovery of possession is 12 years and in the case on hand also, there is a prayer for declaration and recovery of possession and also mandatory injunction. Therefore, the prayer in respect of recovery of possession is within the limitation period. As already discussed by this Court, the limitation is to be decided by the Trial Court after full trial ***for***



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determining the real question in controversy between the parties. Therefore,
the order passed by the Trial Court is liable to be set aside.

11. In view of the above discussion, this civil revision petition is allowed and the order passed by the District Munsif Court, Dharmapuri made in I.A. No.165 of 2020 in O.S. No.193 of 2014 dated 01.12.2021 is set aside and I.A. No.165 of 2020 is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

02.07.2024

Index : Yes/No
Speaking order/non-speaking order
mjs

To

The District Munsif Court, Dharmapuri .



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P.DHANABAL, J.,

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