



WEB COPY



C.R.P.(PD).No.980 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(PD).No.980 of 2021

and

C.M.P.No.7847 of 2021

A.Gowri

... Petitioner

VS

1.R.Mani

2.K.P.Nagarajan

3.M.Pachamuthu

4.U.V.Sadaiyappan

5.P.Ragupathy

6.R.M.Palaniappan

7.T.M.Ravi Chandran

8.Madhal Lal D Chawla

9.Madesh D Chawla

10.Sanjay D Chawla



C.R.P.(PD).No.980 of 2021

11.Rekha M Chawla

12.Roma M Chawla

13.K.V.P.Kambadass

14.K.V.P.Balasubramani

15.K.V.P.Govindaraj

16.K.V.P.Nagaraj

17.K.V.P.Chandra Sekar

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the Judgement and Decree passed in I.A.No.01 of 2021 in O.S.No.561 of 2012 dated 15.02.2021 in so far as partly dismissing the same pending on the file of the 3rd Additional District Munsif Court, Salem by allowing the Civil Revision Petition.

For Petitioner : Mr.N.Umapathi

For R8 to R17 : Mr.R.Nalliyappan

For R1 : Died

For R2 : No Appearance

For R3 : Batta Due

For R5 and R7 : Not Ready in Notice



C.R.P.(PD).No.980 of 2021

ORDER

WEB COPY

The Civil Revision Petition is filed challenging the order passed by the Trial Court partly dismissing the amendment application filed by the petitioner.

2. The petitioner herein filed a suit for permanent injunction restraining the defendants 8 to 17 from interfering with petitioner's right to use the existing 30 feet East - West and North - South road in suit A and B Schedule property. The suit was resisted by the respondents by denying the petitioner's right over the suit 'A' schedule property.

3. Now, the petitioner filed instant application for amendment of the plaint. By way of amendment, the petitioner wants to include a prayer for declaration that suit road is a common road and also for mandatory injunction to remove obstructions put up by defendants in the suit road. The Trial Court allowed the amendment in respect of prayer for mandatory injunction. On the other hand, the prayer for declaration was negatived on the ground that such



prayer would be barred by limitation. The Trial Court said that the right of the petitioner over suit 'A' schedule property was denied in the written statement filed by 8th defendant as early as 28.02.2013. The petitioner failed to seek amendment for inclusion of declaration prayer within three years from the date of denial of her right and hence, the amendment sought for to include a prayer for declaration is barred by limitation. Aggrieved by the dismissal of the amendment application in respect of prayer for declaration, the petitioner is before this Court.

4. The learned counsel appearing for the petitioner submitted that the Trial Court having allowed the prayer for mandatory injunction ought not to have dismissed the amendment in respect of prayer for declaration. He further submitted that the Trial Court by allowing the parties to raise the question of limitation at the time of final disposal ought to have allowed the amendment application. The learned counsel further submitted that allowing of the amendment application will enable the Court to decide the controversy between the parties in a comprehensive way.



5. The learned counsel for the respondents 8 to 17 submitted that the right of the petitioner's over suit 'A' schedule property was denied by the 8th defendant in his written statement, which was filed as early as 28.02.2013 and hence, the amendment application filed by the petitioner after seven years is hopelessly barred by limitation and consequently, the findings reached by the Trial Court on the question of limitation is correct.

6. The petitioner originally sought for permanent injunction restraining the respondents 8 to 17 from interfering with her right to use the suit road. It is settled law the cause of action for prayer for injunction is a continuing one. Now, the petitioner wants to include the prayer for declaration that the suit road is a common road. It is not in dispute the limitation for seeking the relief of declaration is only three years. However, in the case on hand, the relief of declaration is sought for along with prayer for injunction. In such circumstances, whether the limitation for amended prayer is only three years or, when it is sought for along with injunction, whether it can be treated as a continuing one is a matter to be decided at the time of final disposal.



7. In view of the fact the petitioner already sought prayer for injunction, which has got a continuing cause of action, this Court is not inclined to shut the door for the petitioner/plaintiff even at a threshold. In order to enable the Court below to decide all the controversies between the parties in a comprehensive way, the amendment sought for by inclusion of a prayer for declaration shall be allowed, subject to the question of limitation.

8. It is open to the respondents to file an additional written statement raising the plea of limitation with regard to the new prayers sought to be included by way of amendment. The question of limitation shall be decided by the Trial Court as one of the issues at the time of final disposal of the suit.

9. The learned counsel for the respondents 8 to 17 also submitted that amendment is sought for by the petitioner at a belated stage of examination of DW.2. It is seen from the affidavit filed in support of the amendment application, the respondents allegedly caused damage to the portion of the pathway only on 19.08.2019 and thereafter, raised compound wall and installed steel gates. Therefore, according to the petitioner, the obstruction in



C.R.P.(PD).No.980 of 2021

the pathway was made by the respondents only during August-2019. In such circumstances, the petitioner gets cause of action to file amendment application only then. Therefore, in order to decide the controversies between the parties in a comprehensive way, the amendment shall be allowed.

10. With above clarifications on the question of limitation, the Civil Revision Petition stands allowed. No costs. Consequently, the connected civil miscellaneous petition is closed.

06.03.2024

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
dm

To

The 3rd Additional District Munsif Court,
Salem.



WEB COPY



C.R.P.(PD).No.980 of 2021

S.SOUNTHAR, J.

dm

C.R.P.(PD).No.980 of 2021

06.03.2024