



C.R.P.No.955 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CRP.No.955 of 2021

Mr.Raja

... Petitioner

Vs.

1.Mrs.B.Shanthi
2.Mrs.V.Alamelu

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the partly allowed fair and decreetal order passed in I.A.No.12488 of 2018 in O.S.No.791 of 2015 order by the XI Assistant Judge, City Civil Court, Chennai on 16.02.2021.

For Petitioner : Mr.R.Thangamani

For respondent 1 : M/s.G.Veerapathiran

For respondent 2 : Not ready in notice



ORDER

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

2. Originally, the petitioner herein filed a suit for bare injunction against the respondents. Subsequently, the instant amendment application has been filed seeking inclusion of certain averments in the plaint and also for inclusion of new prayer for declaration of title. The Trial Court partly allowed the amendment application in respect of averments sought to be introduced in the body of the plaint. However, the Trial Court dismissed the amendment application in so far as prayer for declaration is concerned. Aggrieved by the same, the petitioner is before this Court.

3. The learned counsel for the petitioner submitted that the Trial Court dismissed the amendment application in so far as inclusion of prayer for declaration is concerned on the ground of limitation and also on the ground



that the amendment would change the character of the suit. It is the submission of the learned counsel that the amendment application was filed within three years from the date of written statement filed by the respondents and hence, the prayer for declaration is well within the time. The learned counsel further submitted that already the suit was filed for bare injunction. Now, the petitioner only seeks inclusion of prayer for declaration and the same will not change the character of the suit.

4.The learned counsel for the respondents submitted that the settlement deed relied on by the petitioner is a concocted document and the same would not confer any title to the petitioner. The learned counsel further submitted that he also filed a suit in O.S.No.253 of 2016 seeking declaration that settlement deed relied on by the petitioner was null and void. Therefore, he submitted that the Trial Court correctly dismissed the amendment application in so far as prayer for declaration is concerned.

5. The respondents herein filed a written statement on 19.11.2015 denying the title of the petitioner. They also instituted a suit impugning the



settlement deed relied on by the petitioner in the year 2016. The present application for amendment seeking inclusion of prayer for declaration was filed on 04.09.2018 well within three years from the date of filing of written statement. In such circumstances, the observation made by the Trial Court as if the prayer for declaration is barred by limitation is not acceptable to this Court.

6. The petitioner initially filed a suit for bare injunction. Now, he wants declaration of his title based on settlement deed allegedly executed by his father. The inclusion of prayer for declaration will not fundamentally change the character of the suit. When the petitioner is entitled to file a fresh suit seeking declaration. Instead of driving him to file a fresh suit, in order to prevent the multiplicity of proceedings, it is better to permit him to seek declaration in the present suit itself. Hence, the impugned order passed by the Court below is set aside. Accordingly, the Civil Revision Petition stands allowed.



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7. Having regard to the fact that the suit is of the year 2015, the Trial Court is directed to dispose of the suit as expeditiously as possible. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No
Internet : Yes / No
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To
The learned XI Assistant Judge, City Civil Court, Chennai.



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S.SOUNTHAR, J.

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