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.CRP.No.1097 of 2021.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 20.04.2023

Delivered On: 28.02.2023

CORAM:

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

CRP.No.1097 of 2021

and

C.M.P.No.8535 of 2021

Selvi

... Petitioner

Vs.

1. T.Jyothimani

2. Sherly

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the order and decretal Order dated 22.02.2021 made in I.A.No.2 of 2019 in O.S.No.26 of 2016 on the file of the learned District Munsif, Ponneri.

For Petitioner : Mr.K.Prabhakaran

For Respondents : Mr.P.Balamurugan

ORDER

This Civil Revision Petition had been filed to set aside the fair and decretal order passed by the learned District Munsif, Ponneri, in I.A.No.2 of 2019 in O.S.No.26 of 2016, dated 22.02.2021.



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2. The Learned Counsel for the Revision Petitioner submitted that the Revision Petitioner is the Defendant in O.S.No.26 of 2016 on the file of the learned District Munsif, Ponneri.

3. The Suit in O.S.No.26 of 2016 was filed by the Plaintiffs for bare injunction restraining the Defendant from interfering with the Plaintiffs' peaceful possession and enjoyment of the suit property. The suit property is a house site measuring 2400 sq.ft situated at Athipattu Village within the jurisdiction of the District Munsif, Ponneri.

4. It is the further contention of the learned Counsel for the Revision Petitioner that Revision Petitioner herein/Defendant in the suit had filed written statement stating that the Plaintiffs in O.S.No.26 of 2016 had entered into a Sale Agreement dated 19.04.1984 with the Defendant, in which, the Defendant had paid the entire sale consideration. Therefore, the parent title deeds were handed over to the Defendant and possession was also handed over to her. Since the party to the Sale Agreement did not come forward to execute the sale deed, the Defendant had filed the suit in O.S.No.218 of 1991 on the file of the learned District Munsif, Ponneri, in



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which, the Suit was decreed for specific performance. Within the specified time, the Defendant in that suit had not come forward to execute the Sale Deed. Therefore, the Plaintiff therein had approached the Court by filing E.P.No.85 of 1993. Based on the E.P, the Sale Deed was executed by the learned District Munsif, Ponneri.

5. The Learned Counsel for the Revision Petitioner invited the attention of this Court to the typed set furnished by him along with the Civil Revision Petition wherein the copy of sale deed executed by the learned District Munsif, Ponneri is available. Also, the copy of the earlier suit and copy of the present suit in O.S.No.26 of 2016, written statement in O.S.No.26 of 2016, cross examination of the Respondents in this Civil Revision Petition/Plaintiffs in O.S.No.26 of 2016 and the affidavit filed by the Respondents as Petitioners in I.A.No.2 of 2019 in O.S.No.26 of 2016., the Counter filed by the Revision Petitioner herein/Defendant in O.S.No.26 of 2016.

6. It is the contention of the learned Counsel for the Revision Petitioner that the trial in the suit had proceeded with. The 1st Plaintiff was



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examined and he was also cross examined. Subsequently, the case was posted for examination of P.W-3. At that stage, the Plaintiffs in O.S.No.26 of 2016 had filed a petition to amend the plaint.

7. In the amendment sought for, the Respondents herein, as Plaintiffs in O.S.No.26 of 2016, had sought the decree passed in the earlier suit in O.S.No.218 of 1991 and the Sale Deed executed by the learned District Munsif in continuation of the decree in E.P.No.85 of 1993 to be declared as null and void. In the affidavit of the said petition, they had stated that they had filed a petition under Section 5 of the Limitation Act in the earlier suit to condone the delay in filing the petition to set aside the *ex parte* decree and it is pending.

8. It is the contention of the learned Counsel for the Revision Petitioner that the Respondents herein as Plaintiffs in O.S.No.26 of 2016 had filed the suit for bare injunction, in his examination in Chief had filed documents, which are certified copies of the Deeds, the originals having been handed over to the Petitioner herein in continuation of the Sale Agreement which he had entered into with the Petitioner herein.



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9. While so, having knowledge of these things, the Respondents had filed the petition seeking to set aside the *ex parte* decree with the condone delay petition and invoking the very same decree here in the suit in O.S.No.26 of 2016 thereby seeking to declare the decree and the sale deed in continuation of the decree as null and void, which cannot be entertained. The Respondents herein as Plaintiffs in O.S.No.26 of 2016 are simultaneously proceeding with the two civil proceedings against the Revision Petitioner herein.

10. Learned Counsel for the Revision Petitioner also invited the attention of this Court to the order dated 22.02.2021 passed by the learned District Munsif, Ponneri in I.A.No.2 of 2019 in O.S.No.26 of 2016, wherein it is stated as follows:-

“On perusal of the records it is seen that the plaint was taken on file on 11.02.2016 and written statement was filed on 26.10.2016. Thereafter, issues were framed and was posted for trial. Thereafter, on 03.07.2019 it was posted to special list for filing proof affidavit and was adjourned to 17.07.2019-17.09.2019. On 17.09.2019 the present petition came to be presented and represented and finally taken up on file on 23.09.2019. It is also seen that the amendment petition is a post trial amendment. The suit is now posted for further PWs. The Petitioner/Plaintiff filed the above suit for permanent injunction not to interfere with the Plaintiff's peaceful possession and enjoyment of the suit property. The present petition seeks to insert new pleadings and



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prayer. It is seen that the written statement was filed in the year 2016 and the present petition has been filed after nearly 3 years that too after the commencement of trial. No reason has been stated for the delay and needs to be viewed strictly. The court also feels that the Petitioner/Plaintiff having approached the court with the prayer has to be given opportunity to put forth this case in toto. The court also feels that there will not be any prejudice caused to the respondent, if the petition is allowed. Hence, the court is inclined to allow the petition on payment of costs. In the result, this petition is allowed on condition of payment of Rs.500/- to the District Legal Service Authority on or before 01.03.2021 failing which this petition shall stand dismissed automatically.”

11. It is the further contention of the learned Counsel for the Revision Petitioner that having observed that the petition is belated and also against Civil Procedure Code (Amendment) Act, 2002, the learned Judge had contrary to the observation, allowed the petition by observing that there will not be any prejudice to the Respondents, if the petition is allowed.

12. It is the contention of the learned Counsel for the Revision Petitioner that in the earlier suit instituted in the year 1991 the Respondents herein remained *ex-parte*. In continuation of which, E.P was executed and based on which, the Sale Deed was executed in favour of the Revision Petitioner. At that stage, after 27 years, the Respondents herein had instituted the suit, that too, for bare injunction. Having instituted the suit for



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specific performance which ended up in decreeing the suit. In continuation of the decree, the Execution Petition having been executed resulting in Sale Deed was registered. Now the valuable right of the Revision Petitioner through the earlier suit proceedings which had already ended, having been affected had been ignored by the learned District Munsif in the order. The learned District Munsif had allowed the petition by observing that no prejudice would be caused to the Respondent therein, if the petition is allowed. Aggrieved by the same, the Defendant in O.S.No.26 of 2016 had approached this Court by filing this Civil Revision Petition under Article 227 seeking to set aside the order passed by the learned District Munsif, Ponneri in I.A.No.2 of 2019 in O.S.No.26 of 2016 dated 22.02.2021.

13. Learned Counsel for the Revision Petitioner in support of his arguments invited the attention of this Court to the Judgment of the Madurai Bench of Madras High Court reported in **2005(5) CTC 619 [Rameeza Beevi and Others Vs. S.Mohammed Ibrahim]**, wherein, in the head notes, it has been stated as follows:

“Code of Civil Procedure, 1908, Order 6, Rule 17 - Limitation Act, 1963, Article 59 Amendment of Plaint Amendment seeking relief barred by limitation Application for amendment liable to be dismissed



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Suit for - declaration of title and recovery of possession filed in 1997 - Petition filed by Plaintiff for amendment of plaint seeking cancellation of sale deed in 2003-Defendant resisted amendment application on ground of amended prayer is barred by limitation as per Article 59 of Limitation Act - Starting point of limitation is ordinarily from date of registration unless it is shown other wise - No date or knowledge was mentioned in plaint whereas in cause of action para it is mentioned as 10.4.1997 i.e., date of application for obtaining registration copy of sale deed without mentioning exact date of knowledge of sale deed or its existence - Time will run from date first known to Plaintiff i.e., date of application for obtaining registration copy of sale deed-Three years from said date is on or before 10.4.2000- - Application for amendment of prayer is barred by limitation – Dismissal order of amendment petition is affirmed in Revision Petition by High Court.”

14. The learned Counsel for the Petitioner further invited the attention of this Court to the reported decision in **2005 (5) CTC 619** in the case of **Rameeza Beevi and Others**. The relevant portion is extracted hereunder:

“13. The proposed amendment being one for cancellation or setting aside the sale deed, dated 16.06.1986, this prayer should come under Article 59 of the Limitation Act. Article 59 of the Limitation Act reads:

<i>Description of Suit</i>	<i>Period of Limitation</i>	<i>Time from which period begins to run</i>
<i>59. To cancel or set aside an instrument or decree or for the rescission of a contract.</i>	<i>Three years</i>	<i>When the facts entitling the Plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first become known to him.</i>

Article 59 of the Limitation Act, prescribe the commencement of period of limitation, for this kind of the suit, beginning from the date of



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knowledge. In case of registered sale deed, the registration should be taken as knowledge to one and all. Therefore, ordinarily, unless it is shown otherwise, the date of registration should be taken, as the starting point of limitation.”

15. The amendment sought before the trial Court is barred by limitation. The Plaintiff cannot claim ignorance of the registration of the sale deed. Also, it is the further contention of the learned Counsel for the Petitioner that the right granted to the Defendant cannot be taken away by the proposed amendment as it is hit by limitation. By seeking amendment, the Plaintiffs in the Suit seek cancellation of the decree passed in favour of the Petitioner herein/Plaintiff in O.S.No.218 of 2019, after about 27 years of passing of the decree. Therefore, the same cannot be allowed. Even otherwise when there is destructive plea/inconsistent plea, it cannot help the Plaintiffs' case as per the reported decision in **2015(1) CTC 398** in the case of **C.R.Umapathy and others -vs- D.Sathyanarayana Chettiar**. The relevant portion of the judgment is extracted as under:

“Code of Civil Procedure, 1908 (5 of 1908), Order 6, Rule 17 – Suit for Declaration and Permanent Injunction – Relief of Possession, whether to be added as additional relief – Plaintiff at time of filing of Suit aware that Suit property was sold to Defendant vide registered Sale Deed – Nonetheless, no prayer made in Suit for cancellation of Sale Deed or for relief of possession – Challenge to Sale Deeds, executed in 1998, in Suit filed in 2010, barred by limitation – Held, claims that would be barred by limitation, not permissible to be added as amended



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claims – Not established by Plaintiff that relief of Possession could not be claimed in spite of due diligence, before commencement of trial – Relief of Injunction and Possession, mutually opposite reliefs – In such circumstances, order of Trial Court rejecting Application for amendment, upheld – Civil Revision Petition dismissed.

Jurisprudence – Mutually destructive pleas – Suit for Declaration and Injunction – Plea of Possession sought to be added vide amendment – Held, relief of Injunction and Possession destructive to each other – Plaintiff in same Suit cannot claim both relief.”

16. The same principle applies here also. Therefore, the learned Counsel for the Revision Petitioner seeks to set aside the Order passed by the learned District Munsif, Ponneri in I.A.No.2 of 2019 in O.S.No.26 of 2016, dated 22.02.2021.

17. The learned Counsel for the Respondents submits the few facts which are necessary to appreciate the circumstances leading to the filing of the amendment Petition. The Plaintiffs are from Kerala and they settled in Tiruvotriyur in 1980's. They left for Kerala. The learned Counsel for the Respondents invited the attention of this Court to the averments in the Plaint, copy of the Plaint which was annexed in this Petition.



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18. In support of his submission, the learned Counsel for the Respondents relied on the reported rulings in **2019 (3) Madras Weekly Notes (Civil) 478 [K.Rajendran -vs- S.Chellamuthu & another]** wherein this Court had held as follows:

“12. Though the petition is filed at the post trial stage, an opportunity for the Petitioner to put forth his case is to be given. Unless there is a specific pleading the Petitioner cannot prove that point at the time of trial. Moreover the particulars to be amended will not change the character or nature of the suit. There will not be any necessity for the Court to examine new witness on the specific points to be amended.”

19. In the above decision, this Court had allowed the amendment by setting aside the order of dismissal of the amendment petition by the trial Court. In the reported case, the trial Court had held that the amendment is barred by limitation. Therefore, the learned Counsel for the Respondents seeks to dismiss this Civil Revision Petition.

Point for consideration:

Whether the order dated 22.02.2021 made in I.A.No.2 of 2019 in O.S.No.26 of 2016 on the file of the learned District Munsif, Ponneri, is to be set aside as perverse?

20. On considering the rival submission and on perusal of the order dated 22.02.2021 made in I.A.No.2 of 2019 in O.S.No.26 of 2016 on the file of the learned District Munsif, Ponneri, and also on perusal of the



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documents filed along with this Civil Revision Petition, the order of the learned District Munsif, Ponneri, is found to be unreasonable and unacceptable.

21.In the reported case relied on by the learned Counsel for the Respondents in **2019 (3) Madras Weekly Notes (Civil) 478 [K.Rajendran -vs- S.Chellamuthu & another]**, the suit was for partition. The suit was filed in the year 2011. Subsequently I.A.No.407 of 2015 in O.S.No.112 of 2011 was filed seeking amendment of plaint on the basis of the sale executed by the first Defendant to the second Defendant. The Plaintiff in O.S.No.112 of 2011 is the purchaser of the property in Court auction sale. One P.Kulanthaiyammal had attached the property for recovery of money as attachment before the judgment. Based on attachment before judgment, after the suit was decreed in favour of K.Rajendran, EP was filed for sale of the property. The Plaintiff in O.S.No.112 of 2011 is the purchaser of the property in Court auction sale. He had filed the suit for partition of the property against one Chellamuthu who had sold the property. The Plaintiff came to know about the sale only in the year 2013. He had filed a petition to amend the plaint in the year 2015. In the reported decision, the order of



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the learned trial Judge dismissing the petition as barred by limitation was set aside stating that post-trial amendment is permissible if the same is unavoidable even after the Petitioner adopted due diligence and the amendment will not change the character and nature of the suit. The amendment sought for is to declare the sale deed as null and void. The Plaintiff in the reported decision came to know about the same only in the year 2013 and the limitation started from the date of knowledge. Hence, the Petition is not barred by limitation. In the case before the learned District Munsif, Ponneri the Revision Petitioner is the Defendant. It is the case of the Revision Petitioner that her husband had filed the suit in O.S.No.218 of 1991 against the Plaintiffs before the learned District Munsif, Ponneri in O.S.No.26 of 2016 for specific performance of sale based on the sale agreement. The suit was decreed *ex parte*. Based on the decree, E.P.No.85 of 1993 was filed. Since the Defendants did not come forward to execute the sale deed the learned District Munsif, Ponneri himself had executed the sale deed. On the date of the sale agreement on 19.04.1984, the entire sale consideration was paid to the Defendants in O.S.No.218 of 1991. Only the fact is that the Defendants did not come forward to execute the sale deed. Possession was already handed over to the Plaintiff. Therefore, the Plaintiff



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is in possession and enjoyment of the property in O.S.No.218 of 1991 from the date of agreement of sale dated 19.04.1984. The suit in O.S.No.26 of 2016 is filed by the Defendants in O.S.No.218 of 1991 for permanent injunction only. In the written statement in O.S.No.26 of 2016 the Defendant had clearly stated about the sale agreement, filing of the suit in O.S.No.218 of 1991 and the execution of the sale deed by the Court in E.P.No.85 of 1993. While so, after so many years, the Plaintiffs in O.S.No.26 of 2016 had filed the petition to amend the plaint seeking to set aside the decree passed in the year 1993 after more than 30 years. Therefore, the date of knowledge claimed by the Plaintiffs in O.S.No.26 of 2016 cannot be pressed into service as the Plaintiffs in O.S.No.26 of 2016 were served with notice in E.P.No.85 of 1993. Also, the first Plaintiff in O.S.No.26 of 2016 was examined as P.W-1 and he was cross-examined. P.W-2 was also examined and cross-examined. At the stage of evidence of P.W-3 in which the very same Plaintiff was the party, the Plaintiffs had come up with the amendment petition. Therefore, the observation of the learned District Munsif, Ponneri, while allowing the amendment in I.A.No.2 of 2019 in O.S.No.26 of 2016 that the Court feels that the Petitioners/Plaintiffs who had approached the Court have to put forth their case in toto. The Court



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also feels that there will not be any prejudice caused to the Respondent, if the Petition is allowed is not sustainable. It is an amendment at part-heard stage after cross-examination of the Plaintiffs. The Plaintiffs were aware of all the proceedings in the earlier suit and had not filed any petition to set aside the *ex parte* decree all these years. Only after commencement of trial, the amendment is sought for by which the earlier decree, which had been executed in E.P.No.85 of 1993 is sought to be set aside. Therefore, it is barred by limitation and the said aspect was not at all considered by the learned District Munsif, Ponneri. Therefore, the rulings cited by the learned Counsel for the Respondents in **2019 (3) Madras Weekly Notes (Civil) 478 [K.Rajendran -vs- S.Chellamuthu & another]** will not be applicable to the facts and circumstances of this case. The very same Court, in which the execution of decree for specific performance was executed in E.P.No.85 of 1993, cannot permit amendment of the Plaint in O.S.No.26 of 2016 thereby setting aside the decree passed in a specific performance suit in the year 1993 for the suit filed in O.S.No.218 of 1991. Therefore, the rulings relied by the learned Counsel for the Respondents in **2019 (3) Madras Weekly Notes (Civil) 478 [K.Rajendran -vs- S.Chellamuthu & another]** is rejected



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as not applicable to this case.

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22. The reliance placed on by the learned Counsel for the Respondents in *(2019) 15 SCC 628 [Varun Pahwa vs. Renu Chaudhary]* will also not be applicable to the facts of this case. In the reported decision, the amendment of plaint was to rectify the inadvertent procedural mistake by Advocate describing the parties in the cause title of the suit/memo of parties wherein it was observed by the Hon'ble Supreme Court that rules of procedure cannot defeat the substantive right of the parties.

23. In the reported ruling, the facts before the Hon'ble Supreme Court was different. In that, the Plaint had not been properly drafted in as much as in the memo of parties, the Plaintiff was described as Varun Pahwa (Appellant) before the Hon'ble Supreme Court through Director of the Company, though it should have been the Company through its Director Varun Pahwa. Thus, it is a case of mistake of the Counsel, may be on account of lack of understanding as to how a Private Limited Company is to sue in a suit for recovery of the amount advanced. The memo of parties is thus clearly an inadvertence on the part of the Counsel who drafted the plaint. Such inadvertent mistake cannot be refused to be corrected when the



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mistake is apparent from the reading of the plaint. The rules of procedure are handmaid of justice and cannot defeat the substantive rights of the parties. It is well settled that amendment in the pleadings cannot be refused merely because of some mistake, negligence, inadvertence or even infraction of the rules of procedure. The Court always gives leave to amend the pleadings even if a party is negligent or careless as the power to grant amendment of the pleadings is intended to serve the ends of justice and is not governed by any such narrow or technical limitations. Here in the suit before the learned District Munsif, Ponneri, in O.S.No.26 of 2016 the Plaintiffs in O.S.No.26 of 2016 were the Defendants in O.S.No.218 of 1991. O.S.No.218 of 1991 was filed by the Defendant in O.S.No.26 of 2016 as Plaintiff for the relief of specific performance. It is the clear case of the Plaintiff in O.S.No.218 of 1991 that based on the sale agreement dated 19.04.1984, the entire sale consideration was paid to the Defendants in O.S.No.218 of 1991. The parent deed for the property was handed over to the Plaintiff in O.S.No.218 of 1991. The possession also was handed over to the Plaintiff in O.S.No.218 of 1991. In spite of several requests, the Defendants in O.S.No.218 of 1991 were not come forward to execute the sale deed. Therefore, the Plaintiff in O.S.No.218 of 1991 filed the suit.



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Summons was served. The Defendants entered appearance through Counsel but did not contest the case and remained *ex parte*. Therefore, the suit was decreed *ex parte*. Based on the *ex parte* decree, the Plaintiff in O.S.No.218 of 1991 filed E.P.No.85 of 1993. Notice was served in E.P.No.85 of 1993 on the Respondents who are the Defendants in the suit in O.S.No.218 of 1991. Even then the Defendants did not come forward to execute the sale deed. Therefore, the presiding Judge of the learned District Munsif Court himself had executed the sale deed. When possession and sale deed in continuation of the decree for specific performance is with the Plaintiff in O.S.No.218 of 1991 the Defendants in O.S.No.218 of 1991 having filed the suit in O.S.No.26 of 2016 for permanent injunction against the Defendant in O.S.No.26 of 2016 whereas the Defendant in O.S.No.26 of 2016 had filed written statement narrating the entire facts upto the execution of the sale deed. Therefore, E.P.No.85 of 1993. In the stage of P.W-3, the Plaintiffs in O.S.No.26 of 2016 had filed this amendment petition belatedly after more than a decade. Therefore, the observation of the learned District Munsif, Ponneri, allowing the amendment stating that the Petitioners/Plaintiffs having approached the Court with a prayer in toto cannot at all be accepted. In the facts and circumstances of this case, as they were aware of all these



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developments, the claim that they came to know about the same belatedly and therefore, the Petition is to be allowed cannot at all be accepted. An amendment which is beyond the period of limitation cannot be allowed. That too, after cross-examination of P.W-1 and at the stage of P.W-3. Therefore, the ruling of the Hon'ble Supreme Court relied by the Respondents is not applicable to the facts of this case and hence, it is rejected.

24. The learned Counsel for the Respondents also relied on yet another reported decision in **2019 SCC OnLine Mad. 5361 [Sarasu vs. Vasantha @ Vasanthi and another]**. The facts of the reported ruling is that the amendment of plaint by the Plaintiff was allowed after completion of cross-examination of P.W-1 and P.W-2. The amendment was made by the Plaintiff to include certain movable properties and the claim made by the Plaintiff that she had planted the trees and dug a borewell in the suit property. The trial Court had allowed the application on the ground that there is no prejudice caused to the other side and to avoid technical defects in the plaint. The second Defendant in the suit as second Respondent in the amendment petition aggrieved by the amendment sought by the Plaintiff



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after commencement of the trial was allowed by the trial Court had approached the Hon'ble High Court by way of Civil Revision Petition. It is the contention of the second Defendant as Revision Petition before the Hon'ble High Court that in the additional written statement filed by the second Defendant that she had specifically stated that the trees were planted by her and she only dug the bore well and only in order to take away the said admission made during cross examination. The plaintiff had filed amendment petition contending that the trees were planted by the plaintiff. Therefore, such an amendment was objected to by the Defendant stating that it will take away the rights of the second Defendant. The Plaintiff before the trial Court had argued in the Revision Petition that in order to avoid future dispute, the said application had been filed merely for inclusion of movable properties which may not cause any prejudice to other side and therefore, sought dismissal of the Revision Petition. The High Court had disposed of the Revision Petition stating that the amendment sought by the Plaintiff was after cross-examination and the Court need not consider those amendment as it is subsequent to the recording of evidence thereby the Civil Revision Petition was disposed off. Those facts are not applicable to this case.



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25.The Plaintiffs cannot seek prayer to amend/to include the prayer after cross-examination of P.W-2 thereby seeking to set aside the decree already passed in the year 1993 based on which execution also carried out in E.P.No.85 of 1993. Therefore, the facts are different. The objection of the Respondent in I.A.No.2 of 2019 in O.S.No.26 of 2016 cannot be ignored by any Court of law since the parties in both the suits are same parties. Therefore, the Plaintiffs in O.S.No.26 of 2016 cannot claim ignorance and cannot press into service that they came to know about the sale only in the year 2013 and seek to include the prayer to set aside the *ex parte* decree passed in the year 1993. Therefore, in the light of the above discussion, the rulings cited by the learned Counsel for the Respondents are found not applicable and the same are rejected.

26. In the reported decision relied on by the learned Counsel for the Revision Petitioner in **2005 (5) CTC 619 [Rameeza Beevi and others vs. S.Mohammed Ibrahim]**, the suit was filed in the year 1997. Subsequently in 2003 amendment was sought to cancel the sale deed which was resisted by the Defendant claiming that the amendment sought is barred by limitation as per Article 59 of Limitation Act. Time will run from the date



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first known to the Plaintiff. The facts of the said case applies to the case before this Court. The learned Counsel for the Respondents cannot claim that they did not have knowledge of the fact of the *ex parte* decree which is sought to be set aside now by seeking amendment. Therefore, the said ruling relied on by the learned Counsel for the Petitioner who is the Defendant in O.S.No.26 of 2016 is applicable to the facts of this case.

27. The Court cannot come to the rescue of the person who sleeps over his/her rights and not take action within the specified time. Therefore, the amendment sought by the Plaintiff in I.A.No.2 of 2019 in O.S.No.26 of 2016 is to be rejected.

28. In the light of the above discussion, the point for consideration is answered in favour of the Petitioner and against the Respondents. The order passed by the learned District Munsif, Ponneri in I.A.No.2 of 2019 in O.S.No.26 of 2016 by order dated 22.02.2021 is to be set aside.



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In the result, **this Civil Revision Petition is allowed.**

The order passed by the learned District Munsif, Ponneri in I.A.No.2 of 2019 in O.S.No.26 of 2016 by order dated 22.02.2021 is set aside. Consequently, the connected miscellaneous petition is closed. No costs.

28.02.2024

dh/srm
Index: Yes/No
Internet: Yes/No
Speaking Order/Non-speaking Order

To

1. The District Munsif,
Ponneri.
2. The Section Officer,
V.R.Section,
High Court, Madras.



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SATHI KUMAR SUKUMARA KURUP, J.

dh/srm

Order made in
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