



WEB COPY



C.R.P.No.1961 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE P. DHANABAL

C.R.P.No.1961 of 2022

and

C.M.P.No.9941 of 2022

Puttayi Ammal

... Petitioner

vs.

Manoharan

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, against the Fair and Decreetal order dated 14.03.2022 in I.A.No.346 of 2021 in O.S.No.232 of 2011 on the file of the District Munsif Court, Chengam

For Petitioner : Mr.Anirudh Krishnan

For Respondent : Mr.D.Baskar

ORDER

This Civil Revision Petition has been filed by the petitioner, challenging the order, dated 14.03.2022 passed in I.A.No.346 of 2021 in O.S.No.232 of 2011, by the District Munsif Court, Chengam, wherein, the petitioner herein has filed a petition before the Trial Court to amend the plaint. The said Interlocutory application was dismissed by the Trial Court.



C.R.P.No.1961 of 2022

2. Aggrieved by the said order, the present Civil Revision Petition has been filed.

3. The case of the petitioner is that the petitioner is the Plaintiff in the original suit. The main suit was filed as against the Respondent for the relief of permanent injunction in respect of the suit property. After filing of the suit in O.S.No.232 of 2011, the respondent has filed a suit for partition against the petitioner in O.S.No.265 of 2013. Now both the suits are pending before the Trial Court. The suit property is a Grama Natham house site and the same was occupied by the petitioner's husband about 70 years back. The respondent filed his Written Statement in the main suit by stating that the petitioner have got only 1/5 shares in the suit property and he has claimed 3/5 shares of the subject property. Hence, the petitioner an filed interlocutory application before the Trial Court to amend the prayer for the relief of declaration of title. The said application was dismissed by the Trial Court. Aggrieved by the said order, the present Civil Revision Petition has been filed by the petitioner.



C.R.P.No.1961 of 2022

4. The learned Counsel appearing for the Petitioner would contend that the petitioner has filed a suit before the Trial Court in O.S.No.232 of 2011 for the relief of permanent injunction and the Respondent filed his written statement and denied the right and title over the suit property stating that he is having 3/5 shares in the suit properties. Therefore, the petitioner filed petition before the Trial Court to amend the prayer for the relief of declaration of title over the suit property. The trial Court erroneously dismissed the said petition on the ground that the claim of the petitioner was barred by limitation, already the respondent filed a suit for partition and also the trial was commenced in the said suit. Therefore, the order of the Trial Court is liable to be set aside.

5. The learned Counsel for the Respondent would contend that the suit was filed in the year 2011 and the Respondent filed his written Statement in the year 2013. Thereafter, the petitioner filed a petition before the Trial Court to amend the prayer for the relief of declaration of title in the main suit in the year 2021 i.e., after lapse of limitation period. Already plaintiff side witnesses were examined, therefore, after commencement of Trial the present petition is filed. Therefore, the Trial Court after considering the facts and circumstances of the case and correctly dismissed the petition. Therefore, the present Civil Revision Petition is liable to be dismissed.



C.R.P.No.1961 of 2022

WEB COPY

6. This Court heard both sides and perused the records.

7. It is the admitted fact that after completion of Plaintiff side evidence, on the side of the defendants some of the witnesses were examined. At that stage, the petitioner has filed a petition before the Trial Court to amend the plaint. It is also admitted fact that the suit was filed in the year 2011 and the written statement was filed in the year 2013 and thereafter the interlocutory application to amend the plaint was filed in the year 2021. The petitioner has not stated any valid reason for the delay in filing petition under Order 6 Rule 17 of CPC. Already the trial Court has commenced the Trial and plaintiff side evidence was closed and some Defendant side witnesses were also examined. Moreover, the claim of the plaintiff is barred by limitation, since it is filed after lapse of nine years from the date of filing written statement of the defendant. The present Civil Revision Petition is barred as per Article 58 of the Limitation Act, 1963. The limitation for declaration is three years. Therefore, the present petition is filed after lapse of three years of limitation period. The above said facts were also considered by the Trial court and the Trial Court correctly dismissed the said interlocutory application. The claim in this petition is barred



C.R.P.No.1961 of 2022

by the law of limitation and also the Trial of the main suit is almost over. At this juncture, it is relevant to rely upon the following judgments:-

10(i) ***Chander Kanta Bansal v. Rajinder Singh Anand reported in AIR 2008 SC 2234 - wherein, Hon'ble Supreme Court has held in para 11 as follows:-***

“11. As rightly referred to by the High Court in Union of India v. Pramod Gupta (dead) by LRs and Ors MANU / SC / 0549 / 2005: AIR 2005 SC 3708, this Court cautioned that delay and laches on the part of the parties to the proceedings would also be a relevant factor for allowing or disallowing an application for amendment of the pleadings”.

10 (ii) ***Shiv Gopal Sah v. Sita Ram Saraugi and others reported in AIR 2007 SC 1478 - wherein, Hon'ble Supreme Court has held in para 15 as follows:-***

15. The defendant having set up a rival title on the basis of sale deed dated 04.10.1985 the plaintiff was bound to amend his pleadings if he wanted to challenge the said sale deed to be ineffective and incapable of creating a valid title in favour of the defendant. It completely beats us as to why the plaintiff remained complacently negligent right from 1987 in case of original plaintiff and after 1997 in case of co-plaintiffs. On the top of it when we see the amendment application, it is sadly silent regarding any explanation as to why all these steps were not taken after a long period right from 1987 till the amendment application is made on 11.12.2004. Having not challenged, the sale deed dated 04.10.1985, the plaintiff could not lead evidence regarding the circumstances under which that sale deed came into existence which facts they would be entitled now if the amendments were to be allowed. That



WEB COPY



C.R.P.No.1961 of 2022

would be completely different from their preliminary task of proving a better title to the property.

Under the circumstances we would not permit the plaintiffs now at this stage to introduce a time barred claim under the peculiar facts and circumstances of this case where we find a complacent negligence on the part of the plaintiffs apart from the towering delay of more than 15 years. We, therefore, allow this appeal and set aside the orders of the High Court as well as the trial Court and dismiss the application for amendment dated 11.12.2004”

10 (iii) P. Mariappan v. P.Mohankumar reported in 2021 (5) CTC 727

- wherein, Hon'ble Supreme Court has held in para 18 as follows:-

“18. Article 58 of the Limitation Act is bearing on decision of this case which reads as follows:-

<i>Description of Suit</i>	<i>Period of Limitation</i>	<i>Time from which period begins to run</i>
Part-III – Suits Relating to Declaration		
58. To obtain any other declaration	Three years	When the right to sue first accrues.

Accordingly, the present petition for amendment of the plaint is time barred. The right to sue for declaration of title first arose even on the date of plaint viz 15.02.2012. Thereafter, the respondent filed written statement on 25.06.2012 and specifically pleaded that the petitioner executed sale deed in respect of his half share by the registered sale deed dated 11.04.2002 and sought for recovery of possession. Even then the petitioner failed to challenge the sale deed dated 11.04.2002 and also failed to file reply statement in time. Therefore the amendment sought for by the petitioner is squarely barred by limitation and it cannot be permitted”.



C.R.P.No.1961 of 2022

WEB COPY

On careful perusal of the above said judgments, it is clear that the amendment petition cannot be allowed for the time barred matters and the parties cannot be permitted to amend the pleadings to introduce their time barred claim where there is complacent negligence on the part of the parties apart from towering delay.

8. Therefore, there is no any infirmity or perversity in the order passed by the Trial court and it does not warrants any interference. Hence, there is no merits in the present Civil Revision Petition. Therefore, this Civil Revision Petition is liable to be dismissed. Accordingly, this Civil Revision Petition is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

15.07.2024

gvn

Index : Yes/No

Internet : Yes/No

Neutral Citation : Yes/No



WEB COPY



C.R.P.No.1961 of 2022

P. DHANABAL, J.

gvn

To:

- 1.The District Munsif Court,
Chengam.
- 2.The Section Officer,
V.R.Section,
High Court of Madras.

C.R.P.No.1961 of 2022
and
C.M.P.No.9941 of 2022

15.07.2024