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C.R.P.No.2303 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.06.2024

CORAM:

THE HONOURABLE MR. JUSTICE P.DHANABAL

C.R.P.No.2303 of 2022
and C.M.P.No.11794 of 2022

1. N.Pachaiappan
2. Ponmani

.. Petitioners

Vs.

R.Muruganantham

.. Respondents

Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the order dated 21.04.2022 made in I.A.No.231/2021 in O.S.No.93/2016 on the file of the Principal District Munsif Court, Tiruppur.

For Petitioners : Mr.S.Kanniah

For Respondent : No appearance



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ORDER

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This Civil Revision Petition has been filed as against the order passed by the learned Principal District Munsif, Tiruppur in I.A.No.231/2021 in O.S.No.93/2016.

2. According to the petitioners, they are the plaintiffs and have filed a suit in O.S.No.93/2016 for the relief of permanent injunction and for mandatory injunction. Originally the suit property belonged to one K.N.Subramani and on 09.07.1967 the said K.N.Subramani sold the property to one Samigounder and thereafter they partitioned the property on 09.07.1973. In the said partition suit 'C' schedule property was allotted to one Muthusamy. The said Muthusamy converted the said property into plots. Later Muthusamy executed a General Power of Attorney deed in favour of Muthukumarasamy. The said Muthukumarasamy sold the property to an extent of 1732 sq.ft.(vacant land) to one Velumani. The plaintiffs purchased the said property from Velumani through a sale deed dated 03.02.2010. The said Muthukumarasamy sold the property by retaining 3ft. land in the western side of the property and the same is used



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for maintaining the property. Due to misunderstanding between the plaintiffs and the defendant, the defendant attempted to encroach the said 3 ft. of land. Hence the plaintiffs have filed the present suit.

3. In the above suit an Advocate Commissioner was appointed and he had not inspected the property. While so, on 09.07.2021 the respondent / defendant had lodged a complaint to the Police Station and the Police instructed the petitioners / plaintiffs not to obstruct the respondent if they raise compound wall in the property. Therefore, the petitioners have filed an amendment petition to amend the prayer in the plaint.

4. The respondent has filed a counter by denying the fact that the said property was purchased by the plaintiffs from the said Velumani to an extent of 1732 sq.ft. by leaving 3 ft. land in the western side of the property. In fact the respondent purchased the property in site No.41 and he is in possession and enjoyment of the same. It is alleged by the respondent that the petitioners caused disturbance to the respondent through their building window and thereby he decided to construct a compound wall. Therefore the petition is liable to be dismissed.



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5. Before the trial Court no oral or documentary evidence were adduced on either side. After hearing both the sides, the trial Court dismissed the amendment application. Aggrieved by the said order, the present Civil Revision Petition is filed.

6. The learned counsel for the petitioners would contend that the petitioners have filed an amendment application before the trial Court for amending the prayer in the plaint in respect of declaration and mandatory injunction. In fact the respondent had encroached the property and also denied the title of the property to the plaintiffs and thereby the petitioners sought for the relief of declaration in respect of the sale deed dated 18.09.2012 and to demolish the construction made in the suit property to an extent of 157 1/2 sq.ft. The trial Court had not considered the case of the petitioners and simply dismissed the application on the ground that the petitioners have not filed a petition before framing issues and the present amendment will alter the nature of the suit. In fact the trial was not commenced and the present amendment will not alter the nature of the suit. Therefore, the order passed by the trial Court is liable to be set aside.



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7. No representation for the respondent and his name is printed in the cause list. Since there was no appearance for the respondent, this Court heard the petitioner side and perused the records and passed the order.

8. This petition is filed by the petitioners as against the order passed in I.A.No.231 of 2021 in O.S.No.93 of 2016 wherein the trial Court declined to allow the amendment application filed by the petitioners. According to the petitioners, the property belongs to them through the sale deed dated 18.09.2012 and they have been in possession and enjoyment of the same. While so, they constructed a building in the property by leaving space in the western side of the property. The defendant encroached the property by way of constructing a compound wall. Initially, the petitioners filed a suit for the relief of permanent injunction and the respondent filed written statement by denying the title of the property to the plaintiffs and also constructed the compound wall and thereby the petitioners sought for the relief of declaration and mandatory injunction.



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9. The trial Court has not considered the points in respect of declaration and mandatory injunction and held in the order that the petitioners have not stated any reasons for filing an amendment application after framing the issues and the amendment application is nothing but to fill up the lacuna and also the amendment will alter the nature of the suit.

10. At this juncture, the learned counsel for the petitioners relied on the judgment of this Court in ***Banumathi Vs. Chellamal; Kumar reported in 2012 (3) MWN (Civil) 794 (Mad)*** wherein this Court has held that an application filed at pre-trial stage ought to be allowed and the question of relief for being barred by limitation can be dealt with at the time of trial. In the present case also this Court raised a question in respect of limitation for the relief of declaration and the learned counsel for the petitioners by relying the said judgment submitted that the plea of limitation can be decided at the time of trial and the present amendment application is not only for declaration but also for mandatory injunction. As far as the relief of mandatory injunction is concerned the amendment was brought to the knowledge of the petitioners only after filing the Commissioner report



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which was filed in the year 2021. Therefore at the time of deciding the application for amendment, the Court need not go into the aspect of limitation and it can be dealt at the time of final orders.

11. Since the petitioners have filed the amendment application before commencement of trial and the respondent denied the title of the property to the plaintiffs, in order to avoid multiplicity of proceedings and to give a fair chance to the petitioners, it is appropriate to allow this petition.

12. As rightly contended by the learned counsel for the petitioners, the plea of limitation can be decided after full trial. The trial Court has to decide the limitation point at the time of passing final orders. The trial Court failed to consider that the present amendment will not alter the nature of the suit. Since the plaintiffs have already filed a suit for permanent injunction and the title of the property to the plaintiffs was denied by the respondent and also there was a construction during the pendency of the suit, thereby the order passed by the trial Court is liable to be set aside by allowing this petition.



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13. In the result, the Civil Revision Petition is allowed and the order passed by the learned Principal District Munsif, Tiruppur, in I.A.No.231 of 2021 in O.S.No.93 of 2016 is hereby set aside and the amendment application is allowed. No costs. Consequently, connected miscellaneous petition is closed.

04.06.2024

Index: Yes / No
Speaking order / Non speaking order
Neutral Citation : Yes / No

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The Principal District Munsif Court,
Tiruppur.



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P.DHANABAL, J.,

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