



C.R.P.(PD).No.2555 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(PD).No.2555 of 2021
and C.M.P.No.19049 of 2021

Goundappan

... Petitioner

VS

1.Thangavel

2.Kunjappan

Sadaiyan (died)

3.Palanivel

4.Boodhagoundar

5.The Tahsildar, Taluk Office
Mettur Dam – 1, Mettur Taluk,
Salem District.

6.The Revenue Division Officer,
Mettur Dam – 1, Mettur Taluk,
Salem District.

7.The District Collector,
Dist Collector Office Salem,
Salem District.

8.Thailammal

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9.Ayyandurai
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10.Thangavelu

11.Boothammal

12.Palaniammal

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and decreetal order dated 16.08.2021 in I.A.No.04 of 2021 in O.S.No.284 of 2013 on the file of District Munsif Court, Mettur.

For Petitioner : Mr.R.Subramanian

For R1 to R4
and R8 to R12 : Mr.M.R.Jothimanian

For R5 to R7 : Mr.V.Jeevagiridharan
Additional Government Pleader

ORDER

The Civil Revision Petition is filed challenging the order passed by the Court below dismissing the amendment application filed by the petitioner as barred by limitation.

2. The petitioner herein filed a suit in O.S.No.284 of 2013 on the file of the District Munsif Court, Mettur, seeking declaration of title and permanent injunction. The father of 1st defendant and defendants 2 to 4 therein filed a



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counter suit in O.S.No.31 of 2014 seeking declaration of their title and injunction based on Sale Deed dated 09.06.1977. Now, the petitioner has filed an amendment application seeking inclusion of a prayer for declaration that alleged Sale Deed dated 09.06.1977 relied on by the father of 1st defendant and defendants 2 to 4 was null and void. The said application was dismissed by the Court below on the ground that the petitioner herein filed a written statement in the suit filed by father of 1st defendant and defendants 2 to 4 on 09.06.2014 challenging the Sale Deed as a forged one. Therefore, the Court below held that having failed to seek declaration to avoid the Sale Deed within three years from the date of knowledge, the present application filed after elapse of seven years is hopelessly barred by limitation. Aggrieved by the same, the petitioner is before this Court.

3. The learned counsel appearing for the petitioner submitted that at the time of considering the application for amendment, the Court below need not go into the question of limitation and the same can be agitated at the time of final disposal of the suit.

4. The submission made by the learned counsel for the petitioner is not



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acceptable to this Court, when the prayer sought to be included by way of amendment is barred by limitation, on the face of it the Court below can very well decide the question of limitation even at the time of considering the amendment application as held in ***Revajeetu Builders and Developers vs. Narayanaswamy and Sons*** reported in **2009 (10) SCC 84**. When separate suit with prayer sought to be included by way of amendment is barred by limitation on the date of amendment petition, the amendment shall be disallowed. Therefore, I do not find any error or illegality in the order passed by the Court below dismissing the amendment application on the ground of limitation.

5. The learned counsel for the petitioner submits that the suit filed by the father of 1st defendant and defendants 2 to 4 is hopelessly barred by limitation and the petitioner may be permitted to raise that point at the time of arguments in the main suit. It is settled law the question of limitation can be raised even without plea and the same has to be considered by the Court below under Section 3 of Limitation Act, 1963. Therefore, the petitioner can always raise the question of limitation in the suit filed by father of 1st



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defendant and defendants 2 to 4 in O.S.No.31 of 2014.

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6. With this clarification, the Civil Revision Petition stands dismissed.

No Costs. Consequently, the connected civil miscellaneous petition is closed.

19.01.2024

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

To

- 1.The District Munsif Court,
Mettur.
- 2.The Tahsildar, Taluk Office
Mettur Dam – 1, Mettur Taluk,
Salem District.
- 3.The Revenue Division Officer,
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S.SOUNTHAR, J.

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