



C.R.P.No.3943 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **21.11.2024**

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD)No.3943 of 2024 and
C.M.P.No.21552 of 2024

1. V.Lakshmipathy
2. V.Mohan
Sulochana (Deceased)
3. N.Shyamala
4. Sarala
5. Latha
Babu (Deceased)
6. Varalakshmi
7. Usha
8. B.Indirani
6. B.Vimalraj
10. Rukmani
11. Madhavan
12. Devika
13. Shanthi
14. Jayanthi
15. Gomathi
16. Anand
17. M.Sumathi
18. R.Sankar
19. R. Venkatesan
20. R. Karthikeyan

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Petitioners

..Vs..

1. V.Ravi
2. V. Yuvaraj

...

Respondents



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PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the order dated 28.06.2024 passed by the Hon'ble District Munsif Court at Poonamallee in I.A.No.15 of 2024 in O.S.No.62 of 2018, by allowing this Civil Revision Petition.

For Petitioner : Mr.Ralph V. Manohar
For Respondent : Mr.M.V.Seshachari

ORDER

This Civil Revision Petition challenges the order of the learned District Munsif at Ponnammallee in I.A.No. 15 of 2024 in O.S.No.62 of 2018 dated 28.06.2024.

2. The Civil Revision Petitioners are the Plaintiffs in the suit. O.S.No.62 of 2018 was presented for bare injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the suit property. The Plaintiff pleaded that the suit property had been purchased by their ancestor one Mannar Reddiar on 11.05.1923. Though Mannar Reddiar had purchased the property in his name, the property



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had always be considered as joint family property of Mannar Reddiar and his brothers Ramanujulu Reddiar and A.Vardarajulu Reddiar.

According to the Plaintiffs, Ramanujulu Reddiar passed on. His wife, Perundevi Ammal had on 30.05.1953 conveyed her 1/3rd undivided share, which came to her on her husband's death, in favour of Vardarajaulu Reddiar. They pleaded that they are the legal heirs of Vardarajaulu Reddiar and hence succeeded his estate on his death. They pleaded since their possession was interfered with by the defendants, they presented the suit.

3.On service of summons, the Defendants filed a written statement stating that Perundevi Ammal, the wife of Ramanujulu Reddiar had enjoyed the property absolutely and she had alienated the same in favour of the defendants by way of a registered document dated 03.11.1970.

4.On receipt of the written statement, the plaintiffs filed an application for amendment in I.A.No.293/2019. In the said amendment too, they sought for very same reliefs as was sought for in I.A.No. 15/2024. On account of the fact that the Plaintiffs 1,4 and 8 had passed away and since it was taking time to bring on record their legal



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representatives, I.A.Nos.293/2019 was withdrawn with liberty to file a fresh application. Thereafter, the legal representatives were brought on record. Hence, a fresh application for amendment came to be filed. This petition was numbered as I.A.No.15 of 2024.

5. This was resisted by the defendants pleading that without seeking for title and possession, an application under Order VI Rule 17 is not maintainable. In addition they pleaded that since Perundevi Ammal had executed a document as early as on 03.10.1970, and this having created a cloud over the title of the plaintiffs, they ought to have filed a suit for declaration of title and for consequential relief of injunction. On this ground too they sought for dismissal of the application.

6. The learned Trial Judge came to a conclusion that the period of limitation for relief of declaration is only 3 years and since the written statement had been served on the learned counsel by the plaintiffs on 31.01.2019, and the amendment application having been filed in the year 2024, it is hopelessly barred by limitation. Consequently dismissed the application. Hence, this revision.



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7. I have heard Mr. Ralf Manohar for the civil revision petitioner

Mr.M.V. Seshachari for the respondents.

8. Mr. Ralf Manohar invites my attention to the endorsement made by the learned counsel before the Trial Court at the time of withdrawing I.A.No.293 of 2019 and the order passed by the District Munsif on 10.11.2023. He points out that the plaintiffs had secured liberty from the Court to file a fresh petition. Thereafter, they filed an application seeking amendment as the process of bringing on record the legal heirs had been completed only in 2024. Hence he pleads revision be allowed and the order be set aside.

9. Per contra, Mr.M.V.Seshachari, argues that even if liberty had been granted while withdrawing the earlier amendment application the plaintiffs are still liable to answer the aspect of limitation as mandated by Order XXIII Rule 2 of the Code of Civil Procedure. He adds that the 2nd plaintiff was aware of the sale deed executed by Perundevi Ammal in favour of the defendant as early as on 07.08.2017. He relies upon the endorsement made by the Sub Registrar while issuance of a certified copy of the sale deed of the defendant, on the said date. He points out



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that as the 2nd plaintiff had the knowledge of the document, as early as in the year 2017, he cannot file a petition in the year 2024 seeking for amendment.

10. I have carefully considered the plea of both sides. I have gone through the records.

11. I should point out on 26.10.2024, the Supreme Court in ***A.Thajudeen Vs. Tamil Nadu Khadi and Village Industries Board (2024 SCC online SC 3037)*** held that as long as right to property subsists, a plea of declaration cannot be held to be barred by time. This position of law was laid down by Hon'ble Mr.Justice Pankaj Mithal, after taking note of plea of the defendant, in that case that the suit is barred by time. The ratio of the Judgment of the Supreme Court is that, if the right to property subsists, the relief for declaration being a continuing one, since the right to property is a continuing right, is not barred by time.

12. Further, in ***L.J. Leach and Company Ltd., Vs. Jardine Skinner and Company (AIR 1957 SC 357)***, the Bench of four Judges held that limitation is only an aspect to be taken into consideration at the



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time of grant of leave to amend. This makes it clear that the bar is not total. The learned Trial Judge has concluded as if the relief is totally barred, which I feel is contrary to the views of the Supreme Court set forth above.

13. In any event, it is the not the case where the defendant is pleading the adverse possession. If a right had accrued to the defendant by virtue of delay in filing the amendment application, certainly as stated by the Supreme Court in ***Sampath Kumar Vs. Ayya kannu*** reported in ***AIR 2002 SC 3369***, the relief of amendment ought to have been denied. The suit having been filed in the year 2018 cannot be held to be barred in 2024. The right to property is lost by virtue of Section 27 or Article 64 and 65 of the Limitation Act, 1966, when the possession of the defendant becomes adverse. As pointed out above, the defendant is not taking plea of adverse possession. Both the parties are pleading independent title. Therefore the essential issue in the suit, whether Perundevi Ammal had transferred her right by execution of the documents in favour of Varadarajulu Reddiar in the year 1957 or whether she had retained some right in herself to execute the sale deed in favour of the defendant? has to be gone into.



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14. When plea of independent title are raised, it is the duty of the Court to go into that aspect. I should also take note of the view of Hon'ble Mr. Justice Raveendran in the case of *Anathula Sudhakar Vs. B.Buchi Reddy (AIR 2008 SC 2033)*, wherein he held that in the suit of injunction too, the Court can incidentally go into the question of title. In case, the plaintiff succeeds in proving that Perundevi Ammal had executed a release deed in year 1957, then the relief of declaration sought for in this suit would only be consequential. It is not possible for a person to alienate the property and yet again, alienate the very same property in favour of another 3rd party, especially when the 1st deed subsists.

15. At this stage Mr.M.V.Seshachari pleaded that the amendment should be confined from the date on which the petition was filed and should not be permitted to relate back from the date of the suit. From the aforesaid discussion, it is clear that the issue that the court should decide is on the right of Perundevi Ammal to execute the document in favour of the defendant. Therefore, it matters not, whether amendment should relates back to in the year 2018 or 2024. Therefore, I am not inclined to consider the plea of M.Seshachari.



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16. In the light of the above discussions, this Civil Revision Petition succeeds. The order of the learned District Munsif at Poonamallee in I.A.No.15 of 2024 in O.S.No.62 of 2018, dated 28.06.2024 is set aside. Leave to amend the plaint is granted to the Plaintiffs. It is open to Mr.Seshachari to raise all defenses, including the plea that a suit for bare injunction is not maintainable since the defendants have denied the title of the plaintiffs and have projected a Sale Deed which creates a cloud over the title of the Plaintiffs.

In the result, this Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

21.11.2024

Index:Yes/No
Speaking order/Non-speaking order
Neutral Citation:Yes/No
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To
The District Munsif Court at Poonamallee

V. LAKSHMINARAYANAN,J.



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