



C.R.P.(MD).No.43 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 02.04.2024

DELIVERED ON: 17.04.2024

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(MD).No.43 of 2019

and

CMP(MD).No.203 of 2019

Ramachandran (died)

1.Krishnaveni

2.Veeraputhiran

3.Pandian

4.Gurunathan

5.Velmurugan

...Petitioners

Vs

1.Kandhavel

2.Sundarraaj

3.Ramanathan

4.Valarmathi

5.Pandirani

...Respondents

1/10



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PRAYER: The Civil Revision Petition has been filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 23.11.2018 passed in I.A.No.383 of 2018 in O.S.No.100 2014 on the file of the District Munsif Cum Judicial Magistrate Court, Peraiyur and allow the present Civil Revision Petition.

For Petitioners : Mr.V.Nagendran

For R1 & R3 : Mr.J.Barathan

For R2 & R 4 : No appearance

R5 : Set exparte

ORDER

The plaintiffs in a suit for declaration of title and permanent injunction have filed the present civil revision petition challenging the order wherein the trial Court had dismissed the application filed under Order 6 Rule 17 of C.P.C. for incorporation of a prayer for mandatory injunction.

2.The revision petitioners herein as plaintiffs had filed O.S.No. 100 of 2014 on the file of the District Munsif Court, Peraiyur for the relief of declaration of title and permanent injunction. In the plaint, a prayer for



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permanent injunction has been sought for restraining the defendants 1 to 3 from in any manner attempting to close the 'C' schedule pathway by putting any kind of construction of compound wall etc., in the 'C' schedule pathway.

3.The defendants had filed a written statement on 30.11.2010.In paragraph No.6 of the written statement, the defendants had specifically contended that the construction has been put up much prior to the filing of the suit and therefore, the prayer for permanent injunction not to put up construction is not maintainable. Apart from the said defence, other defences have also been raised by the defendants.

4.Pending suit, the plaintiff had filed I.A.No.1026 of 2010 for appointment of Advocate Commissioner to note down the physical features of the property. The Advocate Commissioner had inspected the property on 13.03.2010 and filed a report on 31.03.2011. In the said report, the Commissioner had specifically pointed out that between A and C schedule properties, a new compound wall has been constructed to a length of about 40 feet.



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5.The plaintiffs had filed I.A.No.383 of 2018 on 13.08.2018 contending the a compound wall has been put up on 01.03.2010 by the defendants and had prayed for introducing a prayer for mandatory injunction to remove the said compound wall.

6.A counter was filed by the defendants and contending that even as per the case of the plaintiffs, a compound wall has been constructed on 01.03.2010 whereas the present application for incorporation of prayer for mandatory injunction has been filed on 13.08.2018 is clearly barred by limitation.

7.The trial Court after considering the submissions made on either side, had arrived at a finding that the amendment sought for in include the prayer for mandatory injunction is clearly barred by limitation and dismissed I.A.No.383 of 2018. Challenging the same, the present revision petition has been filed by the plaintiffs.

8.The learned counsel appearing for the petitioners/plaintiffs had contended that the trial is yet to begin in the suit. The amendment



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application is pre-trial amendment application. Even at the time of filing of the application, the plaintiff had specifically stated that the defendants are attempting to put up a compound wall. Just before the Advocate Commissioner could inspect the property, the defendants have put up a compound wall. Therefore, the present application for inclusion of prayer for mandatory injunction should have been allowed in order to avoid multiplicity of proceedings.

9. When it is the specific case of the plaintiffs that 'C' schedule property is the only pathway to reach 'A' schedule property, any construction is put up by the defendants in the 'C' schedule property would block the access from all sides. That apart, the prayer sought to be included could not be considered at the time of considering the amendment application.

10. The learned counsel appearing for the petitioners had relied upon the judgment of the Hon'ble Supreme Court reported in AIR 2022 Supreme Court 4256 (Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited and another) and relied upon Paragraph No. 70(v)



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and contended that where the amendment is before the commencement of the trial, Court is required to be liberal in its approach. Hence, he prayed for allowing the revision petition.

11.Per contra, the learned counsel appearing for the respondents/defendants pointed out that even as per the admitted case of the plaintiffs, the compound wall has been put up on 01.03.2010 and therefore, the prayer for inclusion of mandatory injunction sought for in the year 2018 is clearly barred by limitation. When the prayer is barred by limitation, the question of allowing the amendment on the ground that it is a pre-trial amendment is not acceptable. Hence, he prayed for sustaining the order passed by the trial Court.

12.I have carefully considered the submissions made on either side and perused the material records.

13.The plaintiffs have sought for a decree for permanent injunction against the defendants not to put up a compound wall while filing the suit on 17.08.2010. When the defendants had filed their written



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statement on 30.11.2010, they have specifically contended that they have already put up a compound wall. The Advocate Commissioner's report dated 31.03.2011 reveals that a compound wall has been newly constructed. Therefore, it is clear that the compound wall has been constructed either in the year 2010 or in the year 2011. The present application seeking to include the prayer for mandatory injunction has been filed only on 13.08.2018.

14.A perusal of the affidavit indicates that the plaintiffs have admitted that the compound wall has been put up on 01.03.2010. Therefore, even as per the averments in the amendment application, the prayer for inclusion of mandatory injunction is clearly barred by limitation. That apart, the plaintiffs have ignored the pleadings in the written statement as well as the findings of the Advocate Commissioner and they have waited for more than 8 years to file an application for inclusion of prayer for mandatory injunction. When the date of putting up the construction is admitted and there is no dispute with regard to the date of cause of action, the question of allowing a time barred amendment would not arise. Only if there is any dispute with regard to the date of arising of



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cause of action, the Court could entertain the amendment application leaving it open to the parties to adjudicate the issue of limitation at the time of trial.

15.In the present case even as per the affidavit in I.A.No.383 of 2018, the compound wall have been put up on 01.03.2010 and therefore, there is no dispute with regard to the fact that the prayer sought for, is clearly barred by limitation. The trial Court has rightly appreciated the said fact and has dismissed the amendment application and there are no merits in the revision petition.

16.In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No
Internet : Yes/No
NCC : Yes/No
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To

- 1.The District Munsif Cum Judicial Magistrate,
Peraiyur
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR, J

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Pre-delivery order made in
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