



C.R.P(MD)Nos.1779 & 1821 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 29.04.2024

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(MD)Nos.1779 & 1821 of 2019

and

C.M.P(MD)No.9204 of 2019

1.Kuppathal

2.Subbulakshmi

3.Samiyappan

4.Manivel

... Petitioners/Petitioners
Plaintiff
(In Both the Cases)

Vs.

1.Nachimuthu @ Natrayan

2.Thangavel

3.Shanmugham

... Respondents/Respondents
Defendants
(In Both the Cases)



C.R.P(MD)Nos.1779 & 1821 of 2019

PRAYER in C.R.P(MD)No.1779 of 2019: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order, dated 15.04.2019 in I.A.No.147 of 2019 in O.S.No. 262 of 2012 on the file of the Additional District Munsif, Karur pending disposal of the above Civil Revision Petition.

PRAYER in C.R.P(MD)No.1821 of 2019: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order, dated 15.04.2019 in I.A.No.146 of 2019 in O.S.No. 262 of 2012 on the file of the Additional District Munsif, Karur pending disposal of the above Civil Revision Petition.

In Both the Cases:

For Petitioners : Mr.K.Govindarajan

For Respondents : Mr.K.Sivabalan
for Mr.M.Bindran

COMMON ORDER

The plaintiffs in O.S.No.262 of 2012 on the file of the Additional District Munsif Court, Karur are the revision petitioners.



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2. The said suit was filed for the relief of mandatory injunction to direct the defendants to restore the fence in 'C' schedule property and to restrain the defendants from obstructing the use of 'B' schedule passage by the plaintiffs and for other consequential reliefs.

3. The defendants had filed their written statement on 26.11.2012 disputing the right of the defendants to use the 'B' schedule property as their pathway. When the suit was posted for arguments, the plaintiffs have filed I.A.No.146 of 2019 to re-open the suit and I.A.No.147 of 2019 to amend the plaint to incorporate the prayer for declaration of the right of the plaintiffs to declare the plaintiffs easementary right over suit 'B' schedule passage to access suit 'A' schedule. This amendment application was stoutly resisted by the defendants citing that, the amendment application has been filed belatedly and the prayer sought for is barred by limitation.



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4. The Trial Court after considering the evidence on either side had arrived at a finding that the amendment sought for is not only belated but also barred by limitation and proceeded to dismiss both the interlocutory applications filed by the plaintiffs. Challenging these two orders, the present revision petitions have been filed.

5. According to the learned Counsel appearing for the revision petitioners, whether the prayer has been barred by limitation or not cannot be considered at the stage when an amendment application is being filed. It is the subject matter of trial. He further contended that the plaintiffs had earlier filed an interlocutory application for reception of documents to prove their title. Though the said application was dismissed by the Trial Court, the revision petitions filed by the plaintiffs were allowed only in 2019. Immediately thereafter, the present applications came to be filed to re-open and to amend the plaint to incorporate the prayer for declaration. Therefore, there is no delay on the part of the plaintiffs in introducing the prayer for declaration.



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6. Per contra, the learned Counsel appearing for the respondent had contended that the suit is of the year 2012 and the defendants have taken a stand in the written statement itself disputing the right of the plaintiffs to use 'B' schedule pathway as a passage. After 7 years, the present application for amendment and to re-open the suit have been filed. There is no due diligence on the part of the plaintiffs in seeking amendment and the proposed amendment is barred by limitation. Hence, he prayed for sustaining the orders passed by the Trial Court.

7. I have carefully considered the submissions made on either side and perused the materials available on record.

8. The plaintiffs had filed a suit with a prayer for mandatory injunction to restore 'C' schedule fence and for a permanent injunction not to prevent them from using the 'B' schedule property as a pathway on the ground that the plaintiffs have perfected the right of easement of way of necessity over the user of suit 'B' schedule passage. Even in November 2012, the defendants have disputed the right of the plaintiffs to use the



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pathway. Therefore, the right to seek a prayer for declaration with regard to the easementary right over the 'B' schedule pathway arose in November 2012. This declaration prayer, does not relate to declaration of title over immovable property. The present declaration sought for, falls under Article 58 of the Limitation Act, wherein period of limitation of three years has been prescribed from the date on which the right to sue first accrues.

9. In the present case, the right to sue for a prayer of declaration has arisen in November 2012 and therefore, the amendment to incorporate a prayer for declaration seeking easementary right ought to have been filed before November 2015. Therefore, the amendment sought for is clearly barred by limitation. That apart, when the defendants have specifically disputed the right of the plaintiffs over the usage of 'B' schedule property as a passage even in the written statement, the amendment having been prayed for after a period of 7 years, that too at a stage when the suit is posted for arguments, is highly belated and clearly barred under the proviso to Order VI, Rule 17 of CPC.



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10. In view of the above said facts, there are no merits in both the revision petitions. Therefore, these Civil Revision Petitions stand dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

29.04.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

To

- 1.The Additional District Munsif,
Karur.
- 2.The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR, J.

BTR

Order made in
C.R.P(MD)Nos.1779 & 1821 of 2019

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