



C.R.P(MD)No.1210 of 2018

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **04.06.2024**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(MD)No.1210 of 2018

and

C.M.P(MD)No.5086 of 2018

Kalimuthuchettiar

... Petitioner/Petitioner/
Plaintiff

Vs.

1.Rajam

2.Lakshmi

3.Arunkumar

4.K.P.Ramasamy

5.Palanisamy

6.M.Rameshpandian

... Respondents/Respondents/
Defendants

Prayer: Civil Revision Petition is filed under Section 115 of Civil Procedure Code, to set aside the order and decretal order, dated 14.02.2018 passed by the learned Additional District Munsif in I.A.No. 1223 of 2017 in O.S.No.177 of 2011.



WEB COPY



C.R.P(MD)No.1210 of 2018

For Petitioner : Mr.N.Balasubramanian

For R6 : Mr.Sathurthiraja
for Mr.S.Kadarkarai

For R1,R2,R3 & R4 : No Appearance

ORDER

The present revision petition has been filed by the plaintiff in O.S.No.177 of 2011 on the file of Additional District Munsif, Srivilliputhur challenging the dismissal of an application filed under Order 6 Rule 17 of Code of Civil Procedure.

2. The petitioner herein as plaintiff has filed the above said suit for the relief of declaration that a particular pathway is a common pathway and for mandatory injunction to remove the encroachments made in the 4th and 5th schedule properties and for a permanent injunction not to encroach upon the property. The evidence on either side was closed and the suit was posted for arguments. At that point of time, the plaintiff has filed an application to implead a third party to the suit and the same was allowed. Thereafter, the plaintiff had filed another application to recall and reopen, for the purpose of marking a document. The said application was also allowed. Thereafter, the present application in I.A.No.1223 of 2017 has been filed by the plaintiff for amendment of the plaint to



C.R.P(MD)No.1210 of 2018

incorporate two prayers for mandatory injunction for the purposes of removal of encroachments made in the suit 4th and 5th schedule properties. The said application was stoutly resisted by the defendants on the ground that the prayer is clearly barred by limitation. The trial Court after considering the submissions on either side, had dismissed the said application. Challenging the same, the present revision petition has been filed.

3. According to the learned counsel appearing for the revision petitioner, they came to know about the encroachments made by the defendants only through the Commissioner's report and these constructions having been put up during the pendency of the proceedings. Unless the prayer for mandatory injunction is permitted, they will put into great hardship.

4. The learned counsel appearing for the respondent had contended that the Commissioner's report was filed before the Court on 16.06.2014 and the present application for amendment of plaint has been filed on 06.11.2017. Therefore, it is clearly barred by limitation. He prayed for dismissal of the revision petition.



C.R.P(MD)No.1210 of 2018

WEB COPY

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

6. The facts narrated above will clearly indicate that the Advocate Commissioner had inspected the property on 12.04.2014 and filed his report on 16.06.2014. The report points out that there are some encroachments in the 4th and 5th schedule property. However, the present application seeking to incorporate the prayer for mandatory injunction with regard to 4th and 5th schedule properties have been filed only on 06.11.2017 which is 3 years beyond the date of the Advocate Commissioner's report. The plaintiff having knowledge about the encroachments through the Commissioner's report, ought to have filed an application within a period of 3 years. Therefore, viewed from any angle, the application filed by the plaintiff seeking to incorporate the prayer for mandatory injunction is clearly barred by limitation and it has been filed only to drag on the proceedings. There is no illegality or infirmity in the order passed by the trial Court.



C.R.P(MD)No.1210 of 2018

WEB COPY

7. Hence, this Civil Revision Petition stands dismissed. No costs.

Consequently, connected Civil Miscellaneous Petition is closed.

04.06.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
gbg

To

1.The Additional District Munsif,
Srivilliputhur.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.R.P(MD)No.1210 of 2018

R.VIJAYAKUMAR,J.

gbg

Order made in
C.R.P(MD)No.1210 of 2018

04.06.2024