



C.R.P.(MD)No.2162 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 19.10.2024

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P.(MD)No.2162 of 2024
and
C.M.P.(MD)No.12283 of 2024

1.K.Nagoor Kani

2.N.Sheik Mohammed

... Petitioners / Respondents /

Defendants 1 & 2

Vs.

M.Rasul Beevi (died)

1.Muthalib Rawthar

2.Raja Mohammed

3.Nabeesa Beevi

4.Amjath Beevi

5.Abdul Kani

6.Syed Mohammed

7.Faritha Banu

... Respondents / Petitioners /Plaintiffs

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order dated 15.06.2024 passed in I.A.No.6 of 2022 in O.S.No.36 of 2015 on the file of the learned Principal District Munsif Court, Manamadurai and allow the above civil revision petition.

For Petitioners : Mr.A.R.Kannappan

For Respondents : Mr.C.Arunmozhi Rajashankar



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ORDER

Heard the learned counsel on either side.

2. The petitioners figured as defendants in O.S.No.36 of 2015 on the file of the Principal District Munsif Court, Manamadurai. In the said suit, the plaintiffs filed I.A.No.6 of 2022 for amending the plaint by including the relief of declaration. IA was allowed vide order dated 15.06.2024. Challenging the same, this Civil Revision Petition came to be filed.

3. The learned counsel appearing for the respondents submitted that following the amendment, the suit has been transferred to the Sub Court, Manamadurai. The suit was instituted for mandatory injunction directing the defendants to vacate and hand over the possession of the suit property. The suit was instituted on 18.02.2015. The revision petitioners filed written statement on 31.08.2015 contesting the plaintiff's title. The plaintiff subsequently passed away and her legal heirs came on record on 02.12.2021. Thereafter, I.A.No.6 of 2022 has been filed for including the relief of declaration. It is well settled that the relief of declaration has to be sought within three years from the date when the cause of action first accrued.



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4. The learned counsel appearing for the revision petitioners draws my attention to the decision reported in **2022 (3) MWN (Civil) 431 (K.R.Mani Vs. Sengodan)**. In the said decision, it has been emphasized that law of limitation would prevail over procedural necessities. Paragraph Nos.52 to 55 of the said decision read as follows:-

“52.In this case, it has to be examined primarily, whether the relief of declaration sought by the plaintiff in O.S.No.176 of 2011 in the year 2017 is barred by the law of limitation. [Article 58](#) of the [Limitation Act](#), states that any declaration is to be sought within a period of three years from the date, when the cause of action first accrued. The crucial words in that particular article are the words 'first – accrued'.

53.It is to be examined, whether in the instant case, the relief of declaration had accrued within a period of three years prior to the year 2017 or much earlier to that period. The answer is that it had accrued much earlier to the three years period prior to the year 2017.

54.In O.S.No.49 of 2010, by September 2011, the written statements had been filed. The defendants had stated that they were the owners of the property, that they had title to the property. Their cause to seek declaration had arisen the minute the plaint in O.S.No.49 of 2010 had been instituted. They should have sought the relief of declaration within a period of three years from that particular date of assertion of title by the plaintiffs.



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55.It is also seen that in O.S.No.176 of 2011, the defendants had filed their written statements in the year 2011 denying the title of the plaintiff therein. Atleast then the defendants should have asserted their title by including the relief of declaration by way of a counter claim.”

5. The learned counsel appearing for the respondents draws my attention to the decision of the Hon'ble Supreme Court reported in **2023 (2) CTC 565 (Ganesh Prasad Vs. Rajeshwar Prasad)**. In the said decision, though it has been stated that the amendment application should be liberally approached, it has also been laid down that the courts must bear in mind the statutory limitation. In a suit filed in 2015, the relief of declaration cannot be introduced by an amendment by filing IA almost 7 years after instituting the suit. On the very face of it, it is barred by limitation. The court below has not taken note of the said aspect. In this view of the matter, the impugned order is set aside. The Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

19.10.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To:
The Principal District Munsif Court, Manamadurai.



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G.R.SWAMINATHAN, J.

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