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CRP NO.1435 OF 2023**IN THE HIGH COURT OF JUDICATURE AT MADRAS****ORDER RESERVED ON : 16 / 12 / 2025****ORDER PRONOUNCED ON : 06 / 01 / 2026****CORAM:****THE HONOURABLE MR. JUSTICE R. SAKTHIVEL****CRP NO.1435 OF 2023****AND****CMP NO.9639 OF 2023**

Jayabalan (Deceased)

1.Ravindran

2.Ananthavalli @ Rani

...

Petitioners /

Respondents 2&5 /

Defendants 2&5

Versus

1.Dr.Ramajayam

2.Raju

3.Ravi

4.Padma

5.Manimekalai

6.Kala

...

Respondents 1 to 6 /

Petitioners / Plaintiffs

7.Manokaran

8.Mangaiarkarasi

...

Respondents 7&8 /

Respondents 3&4 /

Defendants 3 & 4

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, 1950 praying to set aside the Fair and Decretal Order dated February 16, 2023 passed in I.A.No.1 of 2022 in O.S.No.53 of 2022 by the Additional District Court, Mayiladuthurai.

For Petitioners : Mr.A.Muthukumar

For Respondents 1 to 6 : Mr.K.A.Mariappan



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Served – No appearance

For Respondents 7 & 8 : Served – No appearance

ORDER

Feeling aggrieved by the Fair and Decretal Order dated February 16, 2023 passed by 'the Additional District Court, Mayiladuthurai' ['Trial Court' for short] in I.A.No.1 of 2022 in O.S.No.53 of 2022, the Respondents 2 and 5 therein / Defendants 2 and 5 have preferred this Civil Revision Petition under Article 227 of the Constitution of India, 1950.

2. The Revision Petitioners herein are the Defendants 2 and 5; Respondents 1 to 6 herein are the Plaintiffs and Respondents 7 and 8 are the Defendants 3 and 4 in the Original Suit in O.S.No.53 of 2022 on the file of the Trial Court. For the sake of convenience, hereinafter, the parties will be referred to as per their array in the Original Suit.

3. The case of the Plaintiffs is that Suit Item No.1 and some more properties originally belonged to Radhalakshmi who is the mother of the first Plaintiff and grandmother of Plaintiffs 2 to 6. Radhalakshmi executed a Settlement Deed dated September 10, 1952 in favour of her husband - Subbiah Naidu, in respect of the said properties including Suit Item No.1. Her husband - Subbiah Naidu purchased Suit Item No.2 vide



Sale Deed dated February 28, 1957.

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3.1. Subbiah Naidu and Radhalakshmi Ammal had three sons viz., Vasudevan Naidu, Durairaj and Ramajeyam and two daughters viz., Navaneetham and Balambigai. Subbiah Naidu during his lifetime executed a Will dated March 8, 1961 creating life interest in favour of his wife - Radhalakshmi Ammal and vested remainder to his three sons viz., Vasudevan Naidu, Durairaj and Ramajeyam after her lifetime.

3.2. Subbiah Naidu passed away on April 15, 1961. His wife -Radhalakshmi Ammal passed away on December 18, 1987. Among the three sons, one son, namely Durairaj, has been missing for the past 45 years. Hence, as per law, he is deemed to be civil dead. Therefore, Vasudevan and the first Plaintiff-Ramajeyam are entitled each $\frac{1}{2}$ share in both items of the Suit Properties. Vasudevan Naidu passed away on February 22, 1997. The Plaintiffs 2 to 6 are the sons and daughters of Vasudevan Naidu and they are entitled to his share as his legal heirs.

3.3. One Vasudevan Pillai and Devamirdham (both deceased), who are the parents of the Defendants 1 to 4, were tenants of Suit Item No.1. One of the sons of Subbiah Naidu namely, Vasudevan Naidu who is also the father of the Plaintiffs 2 to 6, was working as a Manager in the



Food Corporation of India in various stations and lastly settled at Thanjavur and passed away in 1997. The other son - first Plaintiff was working in Tirunelveli, Madurai and later in Chennai as a Medical College Professor. As they both were residing out of Mayiladuthurai, they did not take steps to receive rent from the tenants / Defendants 1 to 4. Taking advantage of the same, the Devamirdham executed a Settlement Deed dated May 20, 2005 in favour of Defendants 1 and 2 in respect of a portion of Suit Item No.1. In turn, the first defendant executed an Sale Deed dated July 14, 2010 in favour of fourth defendant, and the second defendant executed a Settlement Deed dated October 28, 2010 in favour of fifth defendant. Further, Devamirdham executed a Settlement Deed dated May 19, 2005 in respect of a major portion of Suit Item No.2 in favour of third defendant.

3.4. Hence, the Plaintiffs filed the Suit for declaration of title and recovery of possession from the Defendants and also sought for declaration that the three Settlement Deeds dated May 19, 2005, May 20, 2005 and October 28, 2010, and the Sale Deed dated July 14, 2010 are null and void.

4. The Defendants filed written statement, *inter alia*, stating that several years prior to the filing of the Suit, the Defendants had put up



construction in Suit Item No.1 after obtaining permission from the competent authority. They further denied the Settlement Deed dated September 10, 1952, executed by Radhalakshmi in favour of Subbiah Naidu and the Will dated March 8, 1961, executed by Subbiah Naidu in favour of the first Plaintiff and his brothers. In short, they denied the Plaintiffs' right, title, and interest in the Suit Property.

5. Then the matter was posted for trial. While so, the Plaintiffs filed an Interlocutory Application under Order VI Rule 17 of 'the Code of Civil Procedure, 1908' ['CPC' for short] seeking to amend the plaint incorporating a prayer for delivery of possession after demolishing the existing superstructure. The Trial Court, after hearing both sides, concluded that the prayer sought for by the Plaintiffs is within twelve years i.e., within the period of limitation and accordingly, allowed the Interlocutory Application.

6. Feeling aggrieved by the said Order, the Defendants 2 and 5 have preferred this Civil Revision Petition.

7. Mr.A.Muthukumar, learned Counsel for the Revision Petitioners would argue that the Original Suit was filed before the Principal Sub Court, Mayiladuthurai in O.S.No.165 of 2014. Later, it was transferred to the Trial Court and renumbered as O.S.No.53 of 2022. In



their written statement which was filed as early as in 2015, the Defendants had pleaded that they had already put up a house construction after obtaining building approval and permission from the Competent Authority. The Plaintiffs were well aware of the said fact even before filing of the written statement. Suppressing the said fact, the Plaintiffs in their plaint, described the First Item of the Suit Property as a vacant site. Now, as an afterthought, the Plaintiffs have filed an Interlocutory Application seeking to amend the prayer by incorporating a relief of mandatory injunction to demolish the house, which is clearly barred by limitation. On the very face of it, the amendment sought by the Plaintiffs to include mandatory injunction is barred by limitation. Hence, the Trial Court ought not to have allowed the Interlocutory Application. Accordingly, he would pray to allow the Civil Revision Petition and set aside the Order passed by the Trial Court in I.A.No.1 of 2022 in O.S.No.53 of 2022 and dismiss the Interlocutory Application.

7.1. In support of his submission, he would rely on the Judgment of this Court in *Chinnu Padayachi -vs- Dhanalakshmi*, reported in **2011 (6) CTC 477**.

8. Though Respondents 1 to 6 entered appearance through



their Counsel - Mr.K.A.Mariappan, he did not appear and argue the matter despite sufficient opportunities. Though Respondents 7 and 8 were served with summons, they did not choose to appear before this Court.

9. This Court has considered the submissions made by Mr.A.Muthukumar, learned Counsel for the Revision Petitioners and also perused the case file.

10. The Plaintiffs filed the Suit in the year 2014 seeking declaration of title, recovery of possession, and declaration that the aforesaid Settlement Deeds and Sale Deed are null and void. Now, through the Interlocutory Application, they want to amend the plaint seeking delivery of possession after demolishing the construction put up by the Defendants in the Suit Properties. While the Plaintiffs have already sought for the reliefs of declaration and recovery of possession of the suit property, in order to avoid technical difficulties, they have now sought to include a prayer for a mandatory injunction for removal of the superstructure constructed / erected in the suit property before delivery of possession. The proposed amendment does not alter the nature or character of the Suit.

11. As regards limitation, the prayer for recovery of



possession implies delivery of vacant possession. It means that the defendant shall deliver possession of the suit property after removing any superstructure erected or any permanent changes made. Hence, for the reason that recovery of possession have been sought *prima facie* within limitation period, the amendment sought is also *prima facie* within the limitation period.

12. Whether the Suit Property belongs to the Plaintiffs' predecessor-in-title, whether Defendants 1 to 3 are tenants in the Suit Property or whether the Defendants have perfected title by adverse possession or by any other mode are questions that can be decided only at the time of trial. No prejudice would be caused, if the amendment Application is allowed. Hence, the Trial Court rightly appreciated the facts and allowed the Interlocutory Application filed for amendment. It is to be noted that the trial has not yet commenced. Hence, the amendment sought is a pre-trial amendment. It is settled law that pre-trial amendments should be considered in accordance with law in a lenient manner. Considering the facts and circumstances, this Court is of the view that the Civil Revision Petition does not have merit and is liable to be dismissed.

13. Further, the judgment relied on by the learned Counsel for the Revision Petitioner is not applicable to the present case on hand for



the reason that in the said judgment, the Plaintiffs therein filed a Suit for declaration and injunction. During pendency of the said Suit, after five years from the date of filing of the Advocate Commissioner's report, the Plaintiffs therein filed an Interlocutory Application to amend the plaint incorporating the prayer for mandatory injunction to remove the construction put up in the common land. Facts being such, this Court concluded that the amendment sought for by the Plaintiffs is barred by limitation. Here, the Suit is one for declaration and delivery of possession and the amendment sought for is to include the relief of mandatory injunction to remove superstructure before delivery of possession. Hence, the said Judgment is distinguishable and not applicable to the facts of the present case.

14. Needless to mention that after amendment, the Defendants are entitled to file additional written statement *qua* the amended portion and in such a course, they are entitled to raise all the pleas available to them including the plea of limitation. The Trial Court shall consider the same in accordance with law, without being influenced by any observation made by this Court in any manner, in its final Judgment after completion of evidence.

15. In fine, this Civil Revision Petition is dismissed.



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Considering the facts and circumstances, there shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

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Index : Yes
Neutral Citation : Yes
Speaking Order : Yes
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R. SAKTHIVEL, J.

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To

The Additional District Court
Mayiladuthurai.

PRE-DELIVERY ORDER MADE IN

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