



C.R.P.(MD)No.997 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.04.2023

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P.(MD)No.997 of 2023

and

C.M.P.(MD)No.4681 of 2023

V.Rajarajan

.. Petitioner

Versus

S.Veerayya

.. Respondent

Prayer :- Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order, dated 06.02.2023, in I.A.No.71 of 2023 in O.S.No.251 of 2005, on the file of the Principal District Munsif Court, Dindigul.

For Petitioner : Mr.H.Lakshmi Shankar

For Respondent : Mr.K.Hariharan

ORDER

The petitioner herein is the eight defendant in O.S.No.251 of 2005, which was earlier filed as O.S.No.259 of 1986 before the Principal District Munsif Court, Dindigul. The petitioner and the seventh defendant are the brothers and the sons of Late.Vadivel, the fifth defendant in the said suit.



2. In the above proceedings, the petitioner's and the seventh defendant's interests were represented by their paternal uncle namely, the sixth defendant Soundararajan. The petitioner claims that the subject property namely, Item Nos.31 to 34 were purchased in their favour on 05.11.1986 from the two wives of Late.Subban Ambalam and the purchase was made for their benefit in the name of their paternal uncle Soundararajan, the sixth defendant in the above suit.

3. The records further indicate that the case of the respondent/plaintiff before the Trial Court is that the said Subban Ambalam had executed three Wills, two of which are registered Wills, whereby about 35 items were bequeathed in his favour, in respect of which, there have been further *inter se* alienations by the defendants.

4. The records also indicate that a Memo has been filed on 13.08.1991 by the defendants 5 to 8 in the above suit namely, the father and paternal uncle of the petitioner herein on their behalf and on behalf of the petitioner and his elder brother, [seventh defendant], whereby, they agreed to submit to the decree as far as Item Nos. 31 to 34 are concerned. In the said proceedings, the petitioner and his brother filed I.A.Nos.927 of 2016 to discharge the guardianship and to record them as majors.

5. The learned Principal District Munsif, Dindigul, vide order dated 25.01.2017, allowed the said I.A.No.927 of 2016. The relevant portion of the said



order reads as under:-

"5(4). எதிர்மனுதாரர் தரப்பில் இம்மனுவிற்கு இரண்டு ஆட்சேபனைகள் தெரிவிக்கப்பட்டுள்ளது. முதல் ஆட்சேபனையாக மனுதாரர்கள் சார்பாக மனுதாரர்களின் இயற்கை காப்பாளராக செயல்பட்ட 5ம் பிரதிவாதி 13.08.1991 தேதியிலேயே பிரதான வழக்கில் தீர்ப்பிற்கு சம்மதம் தெரிவித்து, குறிப்பாணை தாக்கல் செய்துள்ளதால் தற்போது மனுதாரர்கள் அசல் வழக்கில் எதிர்வாதம் செய்ய தடைபட்டுள்ளதாக ஆட்சேபிக்கப்பட்டுள்ளது. மனுதாரர்கள் சார்பாக 5ம் பிரதிவாதி பிரதான வழக்கில் தீர்ப்பு செய்ய சம்மதம் தெரிவித்து குறிப்பாணை தாக்கல் செய்திருப்பினும் குறிப்பாணையின்படி அசல் வழக்கில் இன்னும் தீர்ப்பு செய்யாமல் விசாரணைக்காக நிலுவையில்தான் உள்ளது. அதோடு இளவர் மனுதாரர்கள் உரிய வயதை அடைந்தபின் தங்களுக்கு எதிரான வழக்கை எதிர்த்து நடத்த இளவர் மனுதாரர்களுக்கு முழு உரிமை உள்ளது.

5 (5). இளவராக இருந்த சமயத்தில் இயற்கை காப்பாளர் மேற்கொண்ட நடவடிக்கையும், இளவரின் நலனுக்கு விரோதமாக இருக்கும் பட்சத்தில் அது இளவர் மனுதாரர்களை கட்டுப்படுத்தாது. இளவர் மனுதாரர்களுக்காக இயற்கை காப்பாளர் மேற்கொண்ட நடவடிக்கைகள் இளவர் மனுதாரர்களின் நலனுக்கு விரோதமாக உள்ளதா இல்லை என்பதை பிரதான வழக்கில் கொடுக்கப்படும் சாட்சிய சான்றாவணங்கள் மூலமே தீர்மானிக்க இயலும். ஆதலால் பிரதான வழக்கில் இளவர்களாக இருந்த மனுதாரர்களுக்கு வாய்ப்பு கொடுக்க வேண்டும் என்பதால் எதிர்மனுதாரர் ஆட்சேபனையானது மேற்படி வீதம் நிராகரிக்கப்படுகிறது."

6. In Paragraph No.5(7), the objection of the respondent/plaintiff regarding the limitation was also overruled by the Court below with the following observation:-

"5(7). காலவரையரை சட்டத்தின் உறுப்பு 60 ஆனது, அசல் வழக்கை



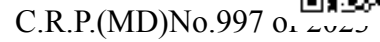
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தாக்கல் செய்வதற்கு காலவரை நிர்ணயம் செய்யப்பட்டுள்ளதேயொழிய உரிமையியல் நடைமுறை சட்டம் கட்டளை 32 விதி 11 மற்றும் 12ன் கீழான மனுவிற்கு அல்ல. ஆதலால் உறுப்பு 60 ஆனது இம்மனுவிற்கு பொருந்தாது. இந்த மனுதாரர்களை இளவராக காட்டி வழக்கு தொடர்ந்துள்ள எதிர்மனுதாரர்தான் இளவர் மனுதாரர்கள் உரிய வயதை அடைந்த சமயத்தில் தக்க நடவடிக்கை மேற்கொண்டிருக்க வேண்டும். அவ்விதம் எதிர்மனுதாரர் இளவர் மனுதாரர்கள் குறித்து உரிய நடவடிக்கை எதுவும் மேற்கொள்ளாமல் இருந்துவிட்டு தற்போது இளவர்களாக இருந்த மனுதாரர்களே தக்க நடவடிக்கை மேற்கொண்டுள்ளபோது அதில் ஆட்சேபனை செய்ய எதிர்மனுதாரருக்கு எவ்வித அடிப்படையும் இல்லை."

7. After the above orders were passed, the petitioner herein along with the seventh defendant, namely, his elder brother filed a written statement on 14.06.2017. After the trial commenced and after completion of chief-examination and cross-examination of the respondent's/plaintiff's witness, the petitioner filed I.A.No.71 of 2023 under Order VIII Rule 9 of C.P.C. to accept the additional written statement and proceed further with the trial. The learned Principal District Munsif, Dindigul, vide impugned order dated 06.02.2023, has rejected the application filed by the petitioner. The relevant portion of the impugned order reads as under:-

"6. பிரச்சினைக்கான தீர்வு

இந்த மனுதாரர் அசல் வழக்கின் 8ம் பிரதிவாதி. தற்சமயம் அசல் வழக்கிற்காக கூடுதல் எதிர்வழக்குரை தாக்கல் செய்துள்ளதாகவும், அதை ஏற்றுக்கொள்ள வேண்டுமானும் இம்மனு தாக்கல் செய்யப்பட்டுள்ளது. அசல் வழக்கானது 2005ம் ஆண்டு தாக்கல் செய்யப்பட்டு தற்சமயம் பிரதிவாதி தரப்பு சாட்சிய விசாரணைக்காக நிலுவையில் இருந்து வருகிறது. அசல் வழக்கின் ஆவணங்களை கவனமாக பரிசீலனை செய்த பட்சத்தில்



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பின்னர் 20 வருடங்கள் காலதாமதமாக தற்சமயம் கூடுதல் எதிர்வழக்குரை
தாக்கல் செய்வதாக தெரிவித்துள்ளதை பொறுத்து கடுமையாக ஆட்சேபனை
தெரிவித்துள்ள நிலையிலும், இம்மனுவானது ஏற்கத்தக்கதாக இல்லை என்றே
இந்நீதிமன்றம் தீர்மானிக்கிறது."

8. The learned counsel for the petitioner submits that the Court below has filed to note that the suit is of the year 1986 and was re-numbered in the year 2005 as O.S.No.251 of 2005. It is submitted that this aspect has not been considered by the Court below. The Court below has also not considered the order passed in I.A.No. 927 of 2016 on 25.01.2017, whereby, the status of the petitioner and the petitioner's brother [seventh defendant] were recorded as "majors" and a consequential order was passed in I.A.No.861 of 2016, discharging the guardianship.

9. It is submitted that even though the trial had commenced, the petitioner was unaware of the Memo, which is said to have been filed on 13.08.1991 by the petitioner's paternal uncle and the father of the petitioner, namely, defendants 5 and 6 for themselves and for the minors, whereby, they agreed to submit to the decree as far as Item Nos.31 to 34 are concerned. It is submitted that above said undertaking is not binding on the petitioner and his brother in view of Order XXXII Rule 7 of C.P.C. Therefore, it is submitted that the impugned order passed by the learned Principal District Munsif, Dindigul, is liable to be interfered with under Article 227 of the Constitution of India.



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10. Per contra, the learned counsel for the respondent/plaintiff submits that the above said Memo, dated 13.08.1991, is binding on the petitioner and his brother [seventh defendant]. That apart, it is submitted that the after the guardianship was discharged and the age of majority was declared, the petitioner and his brother [seventh defendant] filed a written statement on 14.06.2017. It is submitted that in the said written statement, there was no whisper about the Memo, dated 13.08.1991. Therefore, it is submitted that the question of allowing the petitioner to file additional written statement does not arise. Hence, the leave has been rightly rejected by the Court below.

11. That apart, it is submitted that the properties in Item Nos.31 to 34 itself were purchased during the pendency of O.S.No.251 of 2005 [formerly O.S.No.259 of 1986]. Therefore, no useful purpose will be served even if the impugned order is interfered with. It is further submitted that the respondent had also filed C.R.P. (MD)Nos.1395 and 1939 of 2015, for speedy disposal of O.S.No.251 of 2005 and another O.S.No.350 of 2006 and that there were directions issued to the Court below to dispose the suits at the earliest. It is, therefore, submitted that the intention of the petitioner is only to delay the disposal of the suits.

12. I have considered the arguments advanced by the learned counsel for the



petitioner and the learned counsel for the respondent and also perused the provisions of C.P.C., particularly, Order XXXII Rule 7 of C.P.C.

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13. The fate of Memo that was filed by the defendants 5 and 6 *i.e.*, the father and paternal uncle of the petitioner on their behalf and on behalf of the petitioner and his brother [seventh defendant] on 13.08.1991, is to be decided by the Court below at the time of final disposal. Having allowed the petitioner and his brother to be declared as majors and independently, allowed them to file the written statement, the Court is empowered to grant leave under Order VIII Rule 9 of C.P.C. Incidentally, this Court has also dealt with the dichotomy arising out of amendment to C.P.C. in the year 2002 in **Muthusamy vs. Thangaraj** reported in **2005 (4) MLJ 119 : MANU/TN/2464/2005** [C.R.P.(PD)No.478 of 2005, decided on 30.06.2005], in Paragraph No.8, which reads as under:-

"8.True, as seen from the additional written statement, some new pleas have also been taken. Whether this new plea will prevent the plaintiff from succeeding in the case is a matter to be decided at the time of trial, not at the time of receiving the statement. Therefore, the additional written statement, wherein an attempt is made to explain the original statement, giving further particulars, cannot be labelled as entirely a new one, disowning the original case. In this context, we have to see the relevant provisions, namely Order 8, Rule 9, C.P.C. Order 8, Rule 9, C.P.C. reads:

"No pleading subsequent to the written statement of a defendant other than by way of defence to set-off or counter-claim shall be



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presented except by the leave of the Court and upon such terms as the Court thinks fit; but the Court may at any time require a written statement or additional written statement from any of the parties and fix a time of not more than thirty days for presenting the same."

It does not say that no application for receiving the additional statement shall be allowed, after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial, as provided under Order 6, Rule 17, C.P.C. proviso. The legislators when amended the C.P.C. thought it fit not to allow the party to have amendment, as a matter of right, that too in a case where they had an opportunity to raise the same, at the time of filing the pleadings. But, when they come to Order 8, C.P.C., no such restriction has been imposed, thereby giving discretion to the Court concerned to allow the subsequent pleadings, for which it is not necessary whether that defence was available on the date of filing of the original written statement or not. Under Order 8, Rule 9, C.P.C., power is given to the Court to call for the written statement or additional written statement from any party, fixing time, not exceeding 30 days, thereby showing the provisions of Order 8, Rule 9, C.P.C. is liberal in its application, giving wide discretion to the Court, probably to give a chance to the parties, to agitate their right even raising subsequent pleas, for which, the Court should not be rigid. The Courts should exercise their discretion liberally, when it will not affect the right of the party."

14. In my view, the petitioner and his brother cannot be denied the right to file additional written statement, as admittedly, the petitioner and his brother were party



to the proceedings right from the inception of the suit in O.S.No.259 of 1986, which was later re-numbered as O.S.No.251 of 2005. At the time when the suit was instituted, both the petitioner and his brother were minors, they have attained the age of majority on 04.07.1999 and 20.07.1993, respectively. Whether the petitioner and his brother are entitled to successfully defend themselves is a matter to be determined by the Court after trial and final arguments.

15. Further, no prejudice would be caused, if the additional written statement was allowed. The learned Principal District Munsif, Dindigul, has committed an error in rejecting the application particularly, after allowing the order to be passed in I.A.No.927 of 2016, merely, because the written statement was filed after declaration of the petitioner and his brother as majors, would not mean the circumstances, as in this case, leave cannot be granted for filing additional written statement.

16. Therefore, for the above said reasons, in my view, the impugned order, dated 06.02.2023, passed in I.A.No.71 of 2023 in O.S.No.251 of 2005, is liable to be set aside. Accordingly, it is set aside. I.A.No.71 of 2023 in O.S.No.251 of 2005 stands allowed. The additional written statement filed by the petitioner and his brother [seventh defendant] shall be taken on record. If the Court desires, additional issues may be framed. The learned Principal District Munsif, Dindigul, shall thereafter, endeavor to proceed with the trial in O.S.No.251 of 2005 and dispose of the same as expeditiously as possible, preferably, within a period of six months from



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the date of receipt of a copy of this order.

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17. This Civil Revision Petition stands allowed with the above observation and directions. No costs. Consequently, connected Miscellaneous Petition is closed.

NCC : Yes/No
Index : Yes/No
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C.SARAVANAN, J.

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