

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.02.2015

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.R.P.(NPD) No.2246 of 2011

and

M.P.No.1 of 2011

Chandra

...

Petitioner

Vs.

1. Minor Venkatesn alias
Kumaresan,
S/o.Natesan alias Natarajan
Minor rep.by next friend and
Mother Jayalakshmi Ammal.
2. Jayalakshmi Ammal,
3. Periammal,
4. Sellammal,
5. Rajathi,
6. C.Subramani,
7. Duraisamy,
8. C.Senthilkumar

...

Respondents

PRAYER: Civil Revision Petition filed under Section 115 CPC against the fair and final order of the learned Principal Subordinate Judge, Salem in I.A.No.32 of 2011 in A.S.No.7 of 2010 dated 11.04.2011.

For Petitioner	:	Mr. A.K.Kumaraswamy
For Respondents 1 & 2	:	Mr.L.Mouli
For respondents 3	:	Mr.T.Murugamanickam
Respondent 4 to 8	:	No appearance

ORDER

This civil revision petitioner is the 4th defendant in O.S.No.930 of 2004 on the file of the I Additional District Munsif, Salem. The respondents 1 to 3 filed the suit against the petitioner and six others claiming partition and separate possession of the suit properties.

2. After contest, the suit was dismissed. Aggrieved by the Judgment and Decree, the plaintiffs have preferred an appeal before the Principal Sub Court, Salem in A.S.No.7 of 2010. In the appeal, the petitioner filed an application in I.A.No.32 of 2011 under Order 8 Rule 9 and Section 151 CPC seeking permission of the Court to file an Additional Written Statement in O.S.No.930 of 2004.

3. The petitioner has contended that she purchased the suit properties under two registered sale deeds dated 01.11.1990 and 12.03.1997 respectively and as per the sale deeds, she was put in possession of the suit properties. She constructed a Rice Mill with a drying yard and also a residential house on the properties. The plaintiffs never objected to the construction of the Rice Mill and the residential house at the cost of Rs.10,00,000/- and they were silent spectators. However, due to oversight and inadvertence, she has not raised the plea of acquiescence in her written statement and also in the additional written statement and on those grounds, she sought for permission to file an additional

written statement at the appellate stage.

4. The application was opposed by the respondents by filing a counter. The Appellate Judge, dismissed the application. Aggrieved by the order, the present civil revision petition is filed.

5. Mr.A.K.Kumaraswamy, learned counsel for the petitioner submitted that the plea of acquiescence is a legal plea and the petitioner has not proposed to lead further evidence on the additional plea. It is further submitted that the receipt of additional written statement would not cause any prejudice to the respondents and that the plea of acquiescence can be raised at any stage of the proceedings.

6. On the other hand, Mr. Mouli, learned counsel for the respondents 1 & 2 submitted that the suit filed in the year 1998 was disposed of only in the year 2009 and when the appeal was taken up for hearing, the petitioner took out the present petition with a malafide intention. It is further submitted that at the appellate stage, the parties cannot be permitted to take a new plea, which requires detailed consideration on the basis of the oral and documentary evidence.

7. Mr.T.Murugamanickam, learned counsel for the 3rd respondent

submitted that the suit was filed in the year 1998 before the Sub Court, Salem and later, it was transferred to the District Munsif and renumbered in the year 2004. The petitioner filed her written statement on 15.04.2005 and filed additional written statement on 04.03.2008. Though the petitioner had ample opportunity, but, she has not chosen to file the additional written statement before the trial Court. It is further submitted that the issue of acquiescence is not a pure question of law which also requires evidence. Therefore, at the appellate stage, the additional written statement cannot be received.

8. As rightly pointed out by the learned counsel for the respondents, the suit was pending for more than 11 years before the trial Court and the petitioner filed her original written statement on 15.04.2005 and the additional written statement on 04.03.2008. The petitioner has not assigned any acceptable or cogent reasons for filing the additional written statement at the appellate stage. Further, when the appeal was taken up for hearing, the petitioner has chosen to file the petition to receive additional written statement. The learned Appellate Judge rightly dismissed the petition which does not warrant any interference by this Court.

However, it is open to the petitioner to raise her valid defence in the appeal. The Appellate Court shall dispose of the appeal on merits and in accordance with law. Accordingly, the civil revision petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

18.02.2015

Index : Yes/No
Internet: Yes/No
sms

To
The learned Principal Subordinate Judge, Salem.

K.KALYANASUNDARAM,J.

sms

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and
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FOR ORDERS
C.R.P.(NPD) No.2246 of 2011
and
M.P.No.1 of 2011

To

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

Most respectfully submitted by
sms/pa