

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2015

CORAM

THE HONOURABLE Mrs. JUSTICE. S.VIMALA

Civil Revision Petition (PD) No.4757 of 2011

and

M.P.No.1 of 2011

Kamala

... Petitioner/1st defendant

Vs.

Sudha

... Respondent/Plaintiff

Prayer :- Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 15.09.2011 passed in I.A.No.507 of 2011 in O.S.No.143 of 2009 on the file of the Principal Subordinate Court, Salem.

For Petitioner : Mr.P.Jagadeesan

For Respondent : No appearance

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ORDER

The first defendant is the revision petitioner. The suit has been filed by the plaintiff/daughter-in-law claiming partition against the parents-in-law, who are the first and second defendants.

1.1. After the examination of plaintiff as P.W.1, the first defendant has filed the application seeking permission to file additional written statement, which was dismissed.

1.2. This Civil Revision Petition has been filed challenging the dismissal of the petition filed under Order 8 Rule 9 C.P.C., seeking permission to file additional written statement.

2. In order to appreciate the circumstances under which petition to receive additional written statement can be entertained, it is necessary to look into the provisions of Order 8 Rule 9 C.P.C., which reads as under:

"Subsequent pleadings:- No pleading subsequent to the written statement of a defendant other than by way of defence to set-off or counter-claims shall be 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."

2.1. From the perusal of the provisions, it is evident that 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 revealing that the provisions are liberal in its application, giving wide discretion to the Court, probably with a view to bring finality to the litigation.

3. The main question to be looked into is whether the rights of the other party would be put into jeopardy on account of this application being allowed. In other words, whether the rights and interest of the other side can also be protected in view of the additional defence raised in the additional written statement.

3.1. The interest of the other side can be protected by permitting the plaintiff to file a reply statement in which the plaintiff would have a liberty to accept/deny/explain the averments made in additional written statement.

4. The reason for dismissal by the lower Court is that, there is no explanation as to why the Will was kept secret by the son, without even disclosing it to his own mother till his death. The reason for this query is that according to the first defendant, she came to know about the will only on 17.08.2011, even though the will is dated 15.05.2006. Under normal circumstances, this doubt is an appreciable doubt. But, there are two circumstances, which are against the doubt raised. One is that the son has died on account of suicide; if the son had been in dead-bed for some days anticipating death he would have entertained an idea to disclose the death to the mother; as the death is unnatural, this omission is understandable. Secondly, the son probably might not have disclosed if he had a mind to cancel

the Will or alter the Will.

4.1. Moreover, there is an admission by P.W.1 herself that she had knowledge regarding the Will and this admission has been made during cross examination of P.W.1. Under such circumstances, the averments made in the additional written statement has to be received and put to test. As already discussed, by imposing appropriate terms and conditions, the interest of the other side can very well be protected.

5. In the result, the order of dismissal dated 15.09.2011, made in I.A.No.507 of 2011 in O.S.No.143 of 2009 is hereby set aside. Petition filed under Order 8 Rule 9 of C.P.C. is ordered to be received subject to a) grant of liberty to the plaintiff to file a reply statement and also to give evidence with regard to the averments made in the additional written statement and reply statement; b) payment of cost of Rs.2,000/- to the plaintiff, within a period of four weeks from the date of receipt of a copy of this order or depositing to the credit of O.S.No.143 of 2009 before the concerned Court, to be payable to the plaintiff. No costs. Consequently, connected miscellaneous petition is closed.

06.11.2015

Index : Yes / No

Web : Yes/ No

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Note : Issue order copy by today itself.

S.VIMALA,J.

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To

The Principal Subordinate Court,
Salem.

CRP (PD) No.4757 of 2011

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