

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2015

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P(PD).No.4666 of 2015

&

M.P.No.1 of 2015

Marimuthu

..Petitioner/Defendant

Vs.

Ponnusamy

.. Respondent/Plaintiff

Prayer:- Civil Revision Petition filed under Article 227 of Constitution of India against the order dated 31.08.2015 passed by the Subordinate Judge, Bhavani, Erode District made in I.A.No.601 of 2015 in O.S.No.26 of 2011.

For Petitioner : Mr.V.S.Ramadoss

ORDER

Challenging the impugned order passed in I.A.No.601 of 2015 on 31.8.2015, allowing the application for reception of reply statement filed by the plaintiff, the present Civil Revision Petition has been preferred by the petitioner/Defendant.

2.Learned counsel appearing for the petitioner, who is the 2nd defendant has come forward with this Revision stating that the respondent as a plaintiff filed a suit in O.S.No.26 of 2011 before the Subordinate Judge, Bhavani for partition and separate possession of 1/3 share in the suit property against his father and brother. During the pendency of the suit, the father of petitioner died. Hence the legal heir application was filed and the plaint has been amended and the 2nd defendant has filed an additional written statement. At this juncture, the plaintiff/respondent also filed a proof affidavit in the year 2011. Now the plaintiff filed application for reception of reply statement. The trial court without considering the objections raised by the petitioner/defendant, allowed the same, against which the present Civil Revision Petition has been preferred.

3. Challenging the same, the main argument advanced by the learned counsel for the petitioner is that there is no necessity for the plaintiff to file a reply statement repudiating the averments in the additional written statement, that factum was not considered by the trial court. The application for reception of reply statement was filed belatedly and further the delay was not explained properly and that has not been considered by

the trial court. He further contended that correct provision of law has not been mentioned and the application has been filed only under the provision of Section 151 of CPC and prayed for allowing of the Civil Revision Petition.

4. Considering the submissions of learned counsel for petitioner and also the typed set of papers. It is seen that the respondent, as a plaintiff filed a suit for partition and separate possession of 1/3 share in the property against his father and one brother. During the pendency of the suit, since the father of the plaintiff died, legal heirs of the deceased has been impleaded. Subsequently the plaint was amended and additional written statement has been filed. Then only the present application for reception of reply statement has been filed. Even though the petitioner herein has not raised the defence that the correct provision of law has not been mentioned, non mentioning of correct provision of law is not a ground for refusal of the relief. Here the application has been filed under section 151 of CPC. Though wrong provision of law may be quoted, misquoted law of provision is not a ground for dismissal of this application, so the arguments advanced by the learned counsel for petitioner in respect of incorrect provision of law does not merit acceptance.

5. The next point to be decided is whether the reply statement has been filed belatedly?

6. On a perusal of typed set of papers, it is seen that the petitioner herein, filed his additional written statement only on 21.1.2015, pursuant to which, reply statement was filed within six months. So the arguments advanced by the learned counsel for petitioner that the reply statement was filed belatedly does not merit acceptance.

7. The other limb of argument advanced by the learned counsel for petitioner is that there is no necessity for filing the reply statement repudiating and denying the allegation made in this additional written statement. It is true, non filing of reply statement denying the allegations in the additional written statement is not fatal to the case of the plaintiff. Here the plaintiff, after filing of the additional written statement by the 2nd defendant only, filed his reply statement denying the averments in the additional written statement and put forth his case. So the filing of the reply statement is not barred. The trial court has rightly considered that aspect and came to the correct conclusion. Hence, I do not find any merits

in this revision. The Civil Revision Petition is hereby dismissed as devoid of merits and the impugned order passed in I.A.No.601 of 2015 in O.S.No.26 of 2011 by the trial court is confirmed. No costs. Consequently, the connected M.P.No.1 of 2015 is closed.

15.12.2015

Index :Yes/No
Internet:Yes/No
msr

To

The Subordinate Judge, Bhavani, Erode District

R. MALA, J

msr

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