



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.08.2015

CORAM:

THE HONOURABLE MR.JUSTICE P.DEVADASS

C.R.P.(PD) (MD) No.1729 of 2015

S.Gunasekaran : Petitioner/Respondent/Defendant

Vs.

Sri Meenatchi Sundareswarar Thiru Kovil @
Nagara Siva Kovil,
Rep. By the Present Trustee
N.Periyakaruppan
S/o.Narayanan Chettiar
Karaikudi Nagar Sivan Kovil,
Karaikudi,
Sivagangai District.

: Respondent/Petitioner/Plaintiff

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India to set aside the fair and decreetal order made in I.A.No.94 of 2014 in O.S.No.117 of 2011 by the Additional District Munsif, Karaikudi dated 15.04.2015 and pass such further or other orders as this Court may deem fit and proper.

For Petitioner : Mr.D.Venkatesh

ORDER

As this matter involves a very short point, which could be decided now itself, we have decided to dispose of this Civil Revision Petition at the admission stage itself.

2. The plaintiff/the Temple instituted the suit in O.S.No.117 of 2011 to eject the defendant/petitioner. It is an ejectment suit and pure and simple.

3. The defendant in his written statement resisted the suit alleging that his father Somasundaram has been inducted into the property. After that, he continues in the property and there was some superstructure and there are some averments as to the plaintiff Temple filing the suit.

4. Thereafter, he filed I.A.No.94 of 2014 before the trial court seeking leave of the court to file an additional written statement raising the plea touching upon the very ~~temple's~~ temple's suit as well as certain pleas regarding superstructure which is a continuation of its after plea in the main written statement. This was opposed to by the temple

by filing a counter.

5. The trial court referring to Order VIII Rule 9 CPC decided to dismiss I.A.No. 94 of 2014 on the ground that it is not a counter claim or a set off, further, there was a delay and further it has filed with an intention to delay the trial of the suit and further it contains a contra pleadings and thus dismissed the petition.

6. Heard the learned counsel appearing for the petitioner.

7. Order VIII, Rule 9 CPC referred to in the impugned order of the trial court is in two parts. The first part deals with filing of written statement or additional written statement raising counter claim and set off within 30 days. It will arise in money suit or any other suit, where money claim is made by a party.

8. Second part of Order VIII, Rule 9 CPC is general in nature. It empowers the court to give leave to file additional written statement upon certain terms and conditions. The trial court concentrated on the first part and overlooked the second part. The provisions of law has been rightly quoted but wrongly applied.

9. In pleadings of the parties, either plaint or written/additional written statement a decision should not be taken unless the party does not consent. In written or additional statement itself, a suit should not be decided. The defence pleaded in written or additional written statement is to be adjudicated on the evidence and a conclusion shall be drawn thereon.

10. Now, in this case, the pleadings raised in the additional written statement is in continuation of the pleadings in the main written statement. The Court may accept it or reject, but, it should be only after proper adjudication and it is not at the threshold itself. Therefore, in this respect impugned order is vitiated.

11. Delay shall not defeat justice. Opportunity shall be given to the parties to prove whether he is a landlord or tenant or man squatting on other man's property. Let the court accept it or reject that is a different matter.

12. This suit relates to a landlord-tenant dispute. It is a landlord tenant suit. It is pending since 2011.

13. In the result, this Civil Revision Petition is ordered as under:

<https://hcservices.ecourts.gov.in/TCServices/> Fair and decreetal order of the learned Additional District Munsif, Karaikudi, passed in I.A.No.94 of 2014 in O.S.No117 of 2011 are set aside.



ii) I.A.No.94 of 2014 stand allowed.

iii) The trial court will receive the additional written statement filed by the defendant.

iv) The trial court will give opportunity to the plaintiff to file reply statement if any.

v) In case it is necessary it can frame necessary issues.

vi) The Additional District Munsif, Karaikudi is directed to dispose of the suit itself expeditiously preferably within a period of five months from the date of receipt of a copy of this order.

No costs. Consequently, connected M.P. is closed.

Sd/-

Assistant Registrar (T&P)

/True Copy/

Sub Assistant Registrar

To

1. The Principal District Judge,
Sivagangai.

2. The Additional District Munsif,
Karaikudi

+ 1 CC TO MR.D.VENKATESH, ADVOCATE IN SR NO. 49918

SES

TE/JGB-DP/SAR(J) 09/09/2015 3P/4C

C.R.P. (PD) (MD) .No.1729 of 2015
28.08.2015