

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **09.11.2016**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

C.R.P.(P.D.) No.3636 of 2014

Rajammal : Petitioner
versus

1.Thangammal
2.Arulmurugan
3.Rajeswari
4.Sangeetha
5.Sathyadevi : Respondents

PRAYER: Revision filed against the order dated 6.6.2014, in I.A.No.178 of 2014 in O.S.No.129 of 2006 on the file of the Subordinate Judge, Namakkal.

For petitioner : Mr.T.Dhanyakumar

For respondents : Mr.T.M.Hariharan

ORDER

The respondents filed an application before the Trial Court in I.A.No.178 of 2014 to receive additional written statement in O.S.No.129 of 2006. The interlocutory application was allowed by the Trial Court. Feeling aggrieved, the petitioner has come up with this civil revision petition.

2. The learned counsel for the petitioner contended that the predecessor-in-interest of the respondents has already filed a written statement. It was only after his death, the respondents were impleaded. The respondents were therefore not entitled to file additional written

statement.

3. The learned counsel for the respondents justified the order passed by the Trial Court.

4. The petitioner filed a suit for partition and separate possession. The first defendant in the said suit, who is the predecessor-in-interest of the respondents, filed a written statement. Thereafter, the first defendant died. The respondents were made parties to the suit. The respondents after the commencement of trial, filed an application to receive additional written statement.

5. According to the respondents, their newly engaged counsel advised them to file an additional written statement, containing the true facts and the same necessitated the initiation of application in I.A.No.178/2014.

6. The first defendant in the suit has already filed a written statement on 25 October 2006. It is a matter of record that only after filing written statement, the predecessor-in-interest of the respondents died. There is no question of filing additional written statement by the newly impleaded parties straightaway without satisfying the Trial Court that such additional pleadings is necessary. The defendants 7 to 11 stepped into the shoes of

the deceased first defendant. In case additional written statement is to be filed, the parties must plead for such a course with justifiable reasons. The affidavit filed in support of the application in I.A.No.178 of 2014 does not contain any reason, much less justifiable reason to receive additional written statement. This aspect was not considered by the learned trial Judge.

7. The core question is as to whether this Court should set aside the order without giving an opportunity to the respondents to file a better affidavit.

8. The impugned order was passed on 6 June 2014. The matter is now pending trial. In view of the background facts, I consider it deem and fit to give an opportunity to the respondents to file a better affidavit so as to enable the Trial Court to decide the interlocutory application once again.

9. In the result, the order dated 6 June 2014 is set aside. The application in I.A.No.178 of 2014 is restored to file. The respondents are given two week's time to file a better affidavit in support of the prayer in I.A.No.178 of 2014. The petitioner should be given an opportunity to file counter affidavit. The learned trial Judge is directed to consider the application afresh and pass appropriate orders on merits and as per law.

K.K.SASIDHARAN, J.

(tar)

10. The civil revision petition is allowed to the extent indicated above. No costs. Consequently, M.P.No.1/2014 is closed.

09.11.2016

Index:Yes/no
tar

To
The Subordinate Judge, Namakkal.

C.R.P.(P.D.) No.3636 of 2014

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