

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.07.2016

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Civil Revision Petition (PD) No.1185 of 2016

&

C.M.P.No.6487 of 2016

Kathirvel

... Petitioner

VS

Manoharan

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India
praying to set aside the order passed in I.A.No.488/2015 in O.S.No.10 of 2013
dated 19.02.2016 on the file of learned Subordinate Judge, Gobichettipalayam.

For Petitioner : Mr.A.K.Kumarasamy
For Respondents : No Appearance

ORDER

This revision challenges the order of learned subordinate Judge, Gobichettipalayam, passed in I.A.No.488/2015 in O.S.No.10 of 2013 dated 19.02.2016.

2. Plaintiff filed O.S. No. 10 of 2013 on the file of the learned Subordinate Judge, Gobichettipalayam, seeking specific performance. Pending suit, the first defendant in the suit has filed I.A. No. 488 of 2015 in O.S. No. 10 of 2013 for reception of additional written statement. The reason informed for filing additional written statement is stated to be that, earlier, the defendants 1 and 2, who are husband and wife, have filed a common written statement, but due to family dispute, the defendants are now residing separately and now the first defendant has engaged a separate counsel. Therefore, the first defendant has filed the instant application in I.A. No. 488 of 2015 for reception of additional documents. Such application filed by the first defendant was allowed by the court below on the reasoning that both the defendants have engaged separate counsel after filing a common written statement and that in such case, unless the additional written statement filed by the first defendant is entertained, he will not be in a position to cross-examine the second defendant, if it becomes necessary. The learned trial Judge also concluded

that if, during the course of cross-examination, the second defendant makes some statement or admission, it will be construed on the side of the plaintiff that such statement will bind the first defendant as well. In such view of the matter, the learned trial Judge allowed the application filed by the first defendant in the suit for reception of additional written statement. Aggrieved against the same, the present revision stands filed.

3. The revision petitioner questioned the order of the court below on the ground that after commencement of trial, the court below is not legally justified in entertaining the request of the first defendant to file additional written statement. Further, the application has been filed to drag on the suit and therefore, he prayed for setting aside the order passed by the court below.

4. Heard the learned counsel for petitioner.

5. This Court considered the circumstances in which the first defendant has resorted to filing an additional written statement. Earlier, both the defendants filed a written statement, subsequent thereto, due to matrimonial dispute, they are residing separately. Therefore, the reasoning assigned by the court below that if additional written statement is not entertained, the

C.T.SELVAM, J

kpr

first defendant will not be in a position to cross-examine the second defendant is plausible and reasonable. Further, as rightly pointed out by the court below, any admission that would be made by the second defendant during cross-examination will be construed by the plaintiff to be an admission made by the first defendant. Even if there be some contradiction between the original written statement and that additionally filed, it is for the trial court to decide where the truth lies in the final adjudication. In such view of the matter, this court finds no reason to interfere with the reasoned order passed by the court below. The Civil Revision Petition is therefore dismissed. No costs. Connected miscellaneous petition is closed.

13.07.2016

Index:yes/no

Internet:yes

To

The Subordinate Judge,
Gobichettipalayam

Civil Revision Petition (PD) No.1185 of 2016

&

C.M.P.No.1185 of 2016