

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 15.12.2016

Coram

The Honourable MRS.JUSTICE PUSHPA SATHYANARAYANA

C.R.P.PD.No.3399 of 2016
and C.M.P.No.17386 of 2016

1. Ammaniammal

2. Sinthamani

... Petitioners

vs.

1. Pazhamalai

2. Balasubramanian

3. Murugan

4. Ganesan

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 04.03.2016 made in I.A.No.605 of 2015 in O.S.No.247 of 2012 on the file of the Principal District Munsif Court, Virudhachalam.

For Petitioners : Mr.T.Sezhian

For Respondents : No Appearance

ORDER

The plaintiffs are the revision petitioners and that they are challenging the order dated 04.03.2016 passed by the Court below in I.A.No.605 of 2015 in O.S.No.247 of 2012 in refusing to receive the reply statement filed under Order VIII Rule 9 of C.P.C.

2. The brief facts of the petitioners' case are as follows:-

The suit was filed by the petitioners / plaintiffs seeking declaration and permanent injunction. It is stated by the plaintiffs that in the original plaint certain details regarding the transfer of suit property in patta No.835 in the name of the second defendant / second respondent by the revenue authorities; about the enjoyment of the suit properties by the ancestors of the plaintiffs; regarding the dismissal of the suit filed by the first respondent / first defendant in O.S.No.914 of 1986 on the file of the District Munsif, Virudhachalam and confirmed by the Appellate Court in A.S.No.40 of 2005, have been omitted to be included.

3. The said application was resisted by the respondents/defendants contending that even as on date of filing of the suit, these details were available to the plaintiffs and having failed to

state the same in the original plaint, the above application has been filed by the plaintiffs by way of reply statement at the belated stage. Admittedly, the plaintiffs' side evidence was over and the suit is posted for evidence on the defendants' side. Hence, the same has to be rejected.

4. The learned trial Judge dismissed the said application on the ground that if the same is allowed, it would lead to re-open, re-call and re-examine the parties, which would further drag on the proceedings.

5. Heard both sides.

6. Order VIII Rule 9 C.P.C allows pleadings, subsequent to written statement by way of defence to set off of a counter claim can be presented with the leave of the Court and the Court is also empowered to impose terms, as it thinks fit. On an analysis of the rule, we could see that there is a ban on filing of the subsequent pleadings after the filing of the written statement. However, the same is not applicable and pleadings, which are by way of defence to set off or counter claim. The

Rule specifically mentions about the “pleading”, which is applicable to both plaintiff and the defendant. Secondly, written statement or additional written statement from any of the parties shows that rule is applicable to plaintiff as well as the defendant. Therefore, the principle laid down in Order VIII Rule 9 of the Code that no pleading subsequent to the filing of the written statement shall be presented except with the leave of the Court, would apply even to an affidavit or a statement.

7. The additional reply statement filed by the plaintiffs is only to highlight the title of the predecessors of the plaintiffs and also about the suit filed by the defendant, of which, the plaintiffs did not have knowledge as on the date of filing of the suit. As long as the subsequent pleadings brought in by the plaintiffs by way of reply statement does not set up a plea inconsistent with the pleadings, already made is permissible.

8. Here again, the plaintiffs are only highlighting the title of their ancestors and their enjoyment of the property in addition to the fact that there was an earlier suit filed by the defendants, which was

dismissed subsequently. The reception of the additional reply statement therefore may not be prejudicial to the defendants. However the defendants should be given an opportunity to file their written statement in this regard.

9. Accordingly, the Civil Revision Petition is **allowed** and the order passed in I.A.No.605 of 2015 in O.S.No.247 of 2012 is set aside and the petitioners/plaintiffs are permitted to file their reply statement on payment of Rs.2,000/- (Rupees two thousand only) to the respondents/defendants within a period of three weeks from the date of receipt of a copy of this order and the respondents/defendants are also permitted to file their written statement, if any. No costs. Consequently, connected miscellaneous petition is closed.

15.12.2016

Index :Yes

Internet:Yes
srn

PUSHPA SATHYANARAYANA.J

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To

The Principal District Munsif Court,
Virudhachalam.

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