

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.06.2016

CORAM

THE HONOURABLE Mrs.JUSTICE PUSHPA SATHYANARAYANA

C.R.P.PD.No.4020 of 2009

and

M.P.No.1 of 2009

1. Abdul Alim
S/o.S.A.Mohamed Ghouse

2. Hasima Bi,
W/o.S.A.Mohamed Ghouse

Represented by their Power of Attorney Holder
Ibrahim Sahib,
S/o.Sheik Mohamed,
Kottakuppam Village,
Vanur Taluk

... Petitioners

Versus

1. Parivallal
S/o.Pandurangan
No.30, Bharathidasan Street,
Periya Kalapatti,
Puducheery.

2. Bagiramarthandam,
S/o.Marthandam
No.29/10, 2nd East Street,
Thiruvanmiyur, Chennai 600 041.

3. Halima Bi,
W/o.Mohamed Adam Sahibi,
Ranganathapuram Village,
Keezh Puthupattu Madura,
Tindivanam Taluk

...Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 14.08.2009 made in I.A.No.1197 of 2009 in O.S.No.179 of 2007 on the file of the Principal District Munsif Court, Tindivanam.

For Petitioners	: Mrs.N.Mala
For Respondents-1 and 2	: Mr.M.Venkadeshan
For Respondent-3	: No Appearance

ORDER

The Civil Revision Petition is filed by the plaintiffs' challenging the order allowing the petition to receive the additional written statement filed by the second defendant.

2. The suit is filed in the year 2007 for declaration of title and for recovery of possession from the defendants. The plaintiffs have contended that one Mohamed Ghouse purchased the property in the name of his wife Ayisha Bee. The said Mohamed Ghouse died in the year 1996 and the said Ayisha Bee died on 22.05.1999. The plaintiffs 1 and 2 and one Alima Bee, who is arrayed as the third defendant, are the children of Mohammed Ghouse. The plaintiffs have contended that

said Ayisha Bee did not have absolute title over the suit property. While so, the said Ayisha Bee had executed a Power of Attorney on 29.01.1999 in favour of the third defendant, who is her daughter. Though the said Ayisha Bee died in the year 1999 itself, in her capacity as Power of Attorney, a sale deed was executed on 08.07.2005 by the third defendant in favour of the second defendant and another sale deed executed by the second defendant on 11.09.2006 in favour of the first defendant. Therefore, it is contended by the learned counsel for the petitioners / plaintiffs that on the date of execution of the sale deed, the principal was dead and hence the sale effected through the power of Attorney are void.

3. Denying the said contention, the second defendant, who is the second respondent herein had filed a Written statement, wherein, in para 8, he has stated that there were certain documents, which were misplaced, which he would file at the later point of time. Accordingly, I.A.No.1197 of 2009 is filed by the second defendant for receiving the additional written statement, contending that there was an agreement of sale on 29.01.1999 and advance was also paid to the said Ayisha Bee. As the said Ayish Bee had to go to Singapore immediately, she had appointed her daughter, the third defendant as

the power of attorney. As the second defendant had to shift his residence, he misplaced the receipt for payment of advance and also the sale agreement. Hence, the written statement has been filed giving an explanation with respect to the said documents. It was, stiffly opposed by the plaintiffs stating that a new plea is introduced, which is different from the original written statement and the pleadings in the additional written statement takes away the valuable right that has accrued to the plaintiffs. Secondly, it was objected on the ground that the additional written statement is filed after the evidence of P.W.1 and cross examination of the first defendant was over. Merely because in the original written statement a right to file an additional written statement was reserved, that would not automatically empower the defendants to file the additional written statement. Therefore, plaintiffs prayed for dismissal of the same. After hearing both the parties, the trial Court had allowed the application subject to proof of documents alleged therein. The said order is now assailed by the plaintiffs.

4. Normally, the date on which the issues are framed is the date of hearing. Filing of proof affidavit by the plaintiffs would amount to commencement of proceedings. Therefore, in this case, the trial

had already commenced. The Courts jurisdiction to allow such an application is taken away unless the conditions precedent therefor are satisfied, namely, the Court must have come to a conclusion that inspite of due diligence, the defendants could not raise the new pleading before the commencement of the trial. The application has been filed as though it was filed under Order VIII Rule 9, but, it is one filed for amending the pleadings. New pleadings introduced by way of additional written statement has an amendment to the pleadings to be barred after commencement of trial. Normally at such belated stage, leave for filing additional written statement is usually not granted. No doubt, the Court should be liberal in allowing the application for additional pleadings. But the statutory limitations have to be borne in mind.

5. It is also well settled that even a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. Even a single significant detail may alter the entire aspect. However, by reading the original written statement and additional written statement, it is seen that there are new facts introduced with respect to the agreement of sale, which has not been mentioned in earlier written statement. However, ultimately the suit is

to be decided on the basis of the evidence of both oral and documentary to be adduced by both the parties. Hence, in order to adjudicate the dispute between the parties, the parties are given full hearing. The additional written statement itself is filed only to supply what might have been omitted in the original written statement filed earlier. The Court should also grant permission to defendants for filing subsequent pleadings if they are relevant to prove their facts placed before the Court. In the instant case, the plea of the second defendant is only about the existence of the agreement of sale and the receipt for payment of advance sale consideration. By filing the additional written statement, no prejudice would be caused to the plaintiffs and the lower Court had allowed the same subject to the proof of documents sought to be introduced by the defendants.

6. In view of the above, this Court is of the view that there is no justifiable reason to interfere with the decision of the trial Court. The plaintiffs is given an opportunity to file the written statement to raise all objections with respect to the facts put forth in the additional written statement, within four weeks from the date of receipt of a copy of this order. Considering the fact that the suit is of the year 2007,

the learned Principal District Munsif, Tindivanam is directed to dispose of the suit on or before 30.06.2016.

With the above direction, the civil revision petition is disposed of.
No costs. Consequently, connected miscellaneous petition is closed.

06.06.2016

Index: Yes/No
Internet : Yes/No

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To

The Principal District Munsif Court,
Tindivanam.

PUSHPA SATHYANARAYANA.J

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