

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.07.2016

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Civil Revision Petition (PD) No.860 of 2016
and
C.M.P.No.4776 of 2016

1.K.Velayutham Chettiar

2.K.Rajendran Chettiar

Palanivel Chettiar (deceased)

... Petitioners

vs

1.Arumuga Chettiar
S/o.Pazhani Chettiar

2.Poongal Ammal
W/o.Late Arumuga Chettiar

3.Minor Balaji
S/o.Late Pazhanivel Chettiar

4.Minor Eswaran
D/o.Late Pazhanivel Chettiar

5.Minor Vasuki
D/o.Late Pazhanivel Chettiar

Minors 3 to 5 respondents represented

by Court guardian, Mr.A.K.Rajendiran,

Advocate

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the order of learned District Munsif cum Judicial Magistrate, Thittakudi, passed in I.A.No.703 of 2011 in O.S.No.769 of 1997 on 31.08.2015.

For Petitioners : Mr.V.Raghavachari

For Respondents : Mr.M.Musthafakhan
for Mr.V.Anand [R1 & R2]
Mr.R.Veeramani [R3 to R5]

ORDER

This revision arises against the order of learned District Munsif cum Judicial Magistrate, Thittakudi, passed in I.A.No.703 of 2011 in O.S.No.769 of 1997 on 31.08.2015.

2. Respondents 1 and 2/plaintiffs have filed O.S.No.769 of 1997 on the file of learned District Munsif cum Judicial Magistrate, Thittakudi, seeking a declaration that the suit property belongs to them and for other consequential reliefs. Revision petitioners/defendants 1 and 2, having filed the original written statement in the year 1999, have moved I.A.No.703 of 2011 praying that they be permitted to file an additional written statement. The Court below has dismissed such application holding that there was no explanation as to why the additional written statement is sought to be filed after a long delay.

3. Heard learned counsel for petitioners and learned counsel for respondents.

4. Learned counsel for petitioners submits that the additional written statement was only an elaboration of the one originally filed. It did not change the nature or character of the action and the Court below has erred in dismissing such application.

5. Learned counsel for respondents, on the other hand, submits that the order of the Court below is in order and contends that by way of additional written statement, petitioners raise a contention which is contrary to that informed in the original written statement. The suit is of the year 1997, the petitioners have filed the original written statement in the year 1999, the suit is at the stage of cross-examination of PW-1 and hence, the application cannot be allowed at this belated stage.

6. This Court has considered the rival submissions and perused the materials on record.

7. In the written statement originally filed, petitioners/defendants 1 and 2 have contended that the plaintiffs were strangers to the suit property. Petitioners/defendants 1 and 2 were entitled to the suit property, they having succeeded thereto under their father who in turn had succeeded thereto from his father by name Palani Chettiar. It was the contention of petitioners/defendants 1 and 2 that the Palani Chettiar, under whom the plaintiffs sought to claim interest, had nothing to do with the property. By way of additional written statement, the petitioners who had made mention of flow of title in their favour through documents of the year 1948 and 1954 in the original written statement had elaborated thereupon and explained the manner in which they have become entitled to the property and further referred to a settlement deed of the year 1984 towards asserting their case. They also informed that the document of the year 1948 had gained acceptance at the hands of the District Munsif, Virdhachalam in O.S.No.196 of 1949.

8. In the stated circumstances, this Court is of the view that the additional written statement sought to be filed by the petitioners is only towards explaining the stand earlier taken by petitioners in the original written statement and though belatedly filed, the nature or character of the suit would not undergo any change. There is no application of any law of limitation, the

suit is now only at the stage of cross-examination of PW-1 and hence, the Court below ought to have allowed the application.

The Civil Revision Petition is allowed. The order of learned District Munsif cum Judicial Magistrate, Thittakudi, passed in I.A.No.703 of 2011 in O.S.No.769 of 1997 on 31.08.2015, is set aside. No costs. Consequently, connected miscellaneous petition is closed.

19.07.2016

Index:yes/no
Internet:yes
gm

To

The District Munsif cum Judicial Magistrate,
Thittakudi.

C.T.SELVAM, J

gm

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