

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Reserved on : 12.08.2016

Pronounced on : 12.09.2016

CORAM

The Hon'ble Mr.Justice M.V.MURALIDARAN

CRP.No.3678 of 2013
and
M.P.No.1 of 2013

1.Sundarajan Petitioner

Vs.

1.Dr.K.Chandrasekaran

2.Rajendran

3.Ganesan

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the Fair and Decreetal order dated 01.07.2013 made in I.A.No.122 of 2013 in O.S.No.3 of 2010 on the file of the Principal District Munsif, Chidambaram.

For Petitioner : Mr.R.Bharathkumar

For Respondents : Mr.K.S.Madhavan (for R1)

R2 and R3 - No Appearance

सत्यमेव जयते
O R D E R

Heard Mr.R.Bharathkumar, learned Counsel appearing for the Revision Petitioner and Mr.K.S.Madhavan, learned Counsel appearing for the first Respondent.

2.The challenge in the present Civil Revision Petition is to the Order passed by the Principal District Munsif, Chidambaram in I.A.No.122 of 2013 in O.S.No.3 of 2010 dated 01.07.2013. The Suit was filed by the first Respondent for declaration of title to the Suit Property and for removal of super structure put up in the Suit property and other consequential reliefs.

3.The Petitioner has filed the above Interim Application under Order VIII Rule 9 of CPC before the Court for receiving additional written statement which according to the Petitioner was necessitated for placing the material and vital facts. The

main fact that was canvassed by them in sum and substance in the additional written statement was with regard to the title of the Suit Property and it was disputed by the Petitioner that the first Respondent is not having any title upon the Suit property and does not have any locus standi to maintain the Suit in respect of the Suit property.

4.It has also been averred further that while giving evidence, PW2, who was the vendor of the property has produced document dated 03.02.1973 with the nomenclature of Will and stated that the title is with "Shri Ellai Amman Koil" Temple and though one Mr. Arumugam Pillai has executed a will as a trust deed, the legatees shall not have any absolute and exclusive right or title upon the properties which the vendors to the Plaintiff had sought to alienate and consequently stated that the Plaintiff's title itself is in dispute.

5.In addition to that, certain other aspects have also been indicated in the additional written statement that was sought to be filed. In the counter that was filed in the said I.A, the first Respondent has stated that filing of additional written statement amounts to amendment of pleadings which cannot be allowed after commencement of trial and has also asserted their right over the Suit property stating that the property was capable of alienation and the first Respondent was entitled for holding the property from its previous vendor since the alienation was not barred by law.

6.The Trial Court while deciding the above I.A. has opined that it is not necessary to go into the merits of this case in deciding the title to the Suit property and has stated that the CPC provides for filing of written statement on by way of defence to set off or counter claim and in the instant case, nothing of that sort has been raised by the Petitioner and the filing of an additional written statement without any counter claim or set off would only prolong the trial and complicate the otherwise smooth flow of suit proceedings and delay the progress of the Suit and has consequently dismissed the Application.

7.Now, the only issue that arises to be considered is with regard to the scope of Order VIII Rule 9 of the CPC and whether the interpretation of Order VIII Rule 9 by the Trial Court is sustainable in law.

8.I had the benefit of considering the scope of Order VIII Rule 9 in a very recent judgement delivered by me, in C.R.P.(PD) No. 2336 of 2012 dated 26.08.2016 wherein it was held as follows:

"7.A perusal of Order VIII Rule 9 shows that no pleadings subsequent to the Written Statement of the Defendant shall be filed except by the leave of the Court and the Court is also expected to fix a time as

stipulated therein. It has been held in a catena of decisions that the additional Written Statement should not set up a totally new case or state facts at direct variance with the original Written Statement so as to completely change the issue in the case. At this juncture, it is quite relevant to point out that such an embargo is not clearly contained in Order VIII Rule 9 which stands amended as per CPC (Amendment) Act 2002. The legislative intent behind restriction of parties from filing subsequent pleading or leading is to ensure that there is a logical end put to pleadings in a Civil Suit and parties are not permitted to invariably prolong the matter according to their whims and fancies by filing unnecessary pleadings only with an intent to drag on the matter.

8. Though the general stand adopted by the Courts in matters of either amendment of pleadings or permitting for filing additional pleadings is generally liberal so as to provide parties to effectively put forth their case, and also ensure that any aspects that have to necessarily be pointed out before the Court are permitted to be allowed. However, the Courts ought to be cautious in ensuring that the legislative intent behind Order VIII Rule 9 is not given a go by."

9 It has also been held in Devendran and Ors vs. P.V.Palani, 2016 (4) CTC 750 by this Court after referring to the judgements of the Supreme Court on the issue regarding the interpretation of Order VIII Rule 9 of CPC that a liberal approach is to be adopted in cases of amendment of the defence plea namely, by way of additional written statement and delay alone shall not be the reason to refuse permission to file additional written statement. This judgement has been relied upon by Mr.R.Bharath Kumar and accordingly, it has been submitted by him that the Trial Court has adopted a narrow and pedantic approach while interpreting Order VIII Rule 9 and has in fact, misinterpreted the scope of the said provision while passing the impugned order rejecting the application filed by the Petitioner. However, the learned Counsel for the Respondent relied upon the judgement of this Court in N. Srinivasan vs. Muthammal, 1998 (2) CTC 94 wherein this Court has held that the Applicant while filing an application under Order VIII Rule 9 cannot raise inconsistent or alternative plea depriving the plaintiff the benefit of statutory presumption and also, that an application which is belated can also not be entertained. As stated earlier, the purpose of Order VIII Rule 9 providing for filing of additional written statement with the leave of the Court is two-fold. First, it is to ensure that a license is not given to the defendant in a Suit to perpetually keep filing additional documents so as to prolong the Suit and cause prejudice to the Plaintiff by deliberately delaying the Suit from reaching its logical end. Second, it is to ensure that the Court is provided discretion to permit the filing of written statement or additional written statement from any of the parties and fix a time limit of not more than thirty days for

presenting the same. Here, the Court is permitted to exercise its discretion to allow the filing of additional pleadings but however, the provision also clearly indicates that the Court shall not grant more than thirty days for presenting the additional pleadings. Hence, the issue of minimising delay is self contained in the provision itself. However, giving the liberty to the Court of filing the additional written statement at any juncture where the Court feels it is just and necessary.

10. In light of the above said discussion, a look at the impugned Order assessed by the Trial Judge perhaps leads to only one conclusion. And the conclusion is that the scope of Order VIII Rule 9 has not been properly appreciated by the Court below and as a consequence, the claim of the Petitioner for filing additional written statement that deserves credence has been negated erroneously. For the reasons assigned above, this Court is of the view that the impugned Order passed by the Principal District Munsif, Chidambaram in I.A.No.122 of 2013 in O.S.No.3 of 2010 dated 01.07.2013 is liable to be interfered with and accordingly, the same is set aside. The additional written statement filed by the Petitioner shall be taken on record and the Trial Court is directed to expedite the Suit proceedings and complete the same preferably within a period of 4 months from the date of receipt of a copy of this order.

11. Accordingly, the civil revision petition is allowed with the above terms. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

vs

To

The Principal District Munsif,
Chidambaram.

+ 1 cc to M/s. R. Bharathkumar, Advocate SR.52317

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RP(CO)
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