



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.02.2016

CORAM:

WEB COPY

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P (MD) No.468 of 2016 (PD)

and

C.M.P (MD) No.2042 of 2016

Mariya Xavier Jude Roak

.. Petitioner

Vs.

1.Antony Ammal

2.Fr.Sahayaraj Fdo

3.Ratha Rani Alex@ Papammal

4.Sr.Thonammal Fdo

5.Bombaithasan

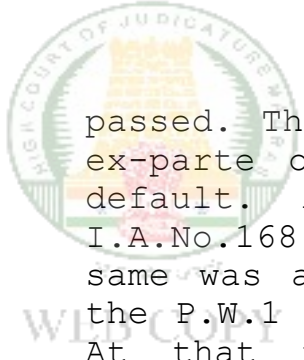
.. Respondents

PRAYER: Civil Revision Petition is filed, under Article 227 of Constitution of India, to set aside the order, dated 19.01.2016 made in I.A.No.425 of 2015 in O.S.No.443 of 2012 on the file of the Additional District Munsif Court, Tuticorin and allow this Civil Revision Petition.

For Petitioner : Mr.R.Vijayakumar

ORDER

The petitioner is the third defendant. The first respondent filed suit in O.S.No.443 of 2012, before the Additional District Munsif, Tuticorin, for declaration and permanent injunction. The petitioner filed written statement on 25.01.2013. After framing issues, the trial was commenced and P.W.1 was examined in chief and petitioner took time for cross examination of P.W.1. The petitioner did not cross-examine the P.W.1 till 13.04.2013, therefore, an ex-parte order was passed, on 13.04.2015. The petitioner filed I.A.No.425 of 2015, on the file of the Additional District Munsif Court, Tuticorin seeking permission to file additional written statement. According to the petitioner, the averments in the additional written statement were not made in the original written statement and additional written statement is necessary to decide the issue properly. The first respondent filed counter affidavit and resisted the same. The first respondent stated that the petitioner entered appearance on 10.10.2012 and filed written statement on 25.01.2013. After commencement of cross-examination of P.W.1. He did not cross-examine the P.W.1 till 13.04.2015, therefore on 13.04.2015, an ex-parte order was



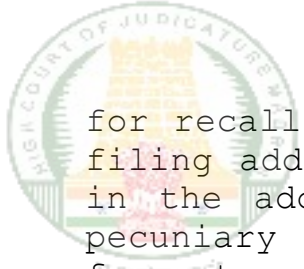
passed. The petitioner filed I.A.No.168 of 2015 to set aside the ex-parte order. The said I.A., was dismissed on 03.07.2015 for default. Again the petitioner filed I.A.No.223 of 2015 in I.A.No.168 of 2015 to restore the said I.A.No.168 of 2015 and the same was allowed. The petitioner filed application for recalling the P.W.1 for cross-examination. The said application is pending. At that time, the petitioner filed I.A.No.425 of 2015 for permission to file additional written statement. The petitioner filed written statement on 25.03.2013 and after taking number of adjournments, only to drag on the proceedings the petitioner has filed the present application. He has not given any reason for not taking the plea at the earliest. The learned Judge considering the facts and materials on record, dismissed the I.A., Against that, the petitioner has filed the present Civil Revision Petition.

2.The learned counsel for the petitioner contended that the petitioner has taken a plea of pecuniary jurisdiction. The said plea is a legal plea that can be raised at any point of time. The first respondent has given valuation of the property which clearly reveals that the value of the suit property is more than one lakh. The learned Judge erred in rejecting the application on the ground of delay. In support of his contention, the learned counsel for the petitioner relied on the judgment reported in 2005-4 M.L.J. 119 (Muthusamy vs. Thangaraj)

"9. In this case, the only grievance, if at all for the revision petitioner, as urged before me, must be that when P.W.1 was in the box, that too pending cross-examination, subsequent pleadings should not be allowed. By allowing the subsequent pleadings, the right of the plaintiff is not going to be affected and it is for the defendant to prove the subsequent pleadings by letting in evidence, since in the original written statement, he has opposed the claim of plaintiff. The plaintiff can also re-examine P.W.1, if he desires, with the permission of the Court, even to deny the allegations in the written statement. Thus, it is seen, ample opportunity is available to P.W.1 to deny or accept the case projected in the additional written statement, which would go to show, no prejudice would be caused to the plaintiff, though the suit is a part heard one, O.8, Rule 9, C.P.C., does not say, after commencement of trial, no subsequent pleading shall be entertained by the Court, as said in O.6 Rule 17, C.P.C., proviso, 10. Considering all these facts as well as in order to give an opportunity to the contesting defendant to raise the plea available, the trial Court has allowed the application to receive the additional written statement, in which I am unable to see any infirmity, warranting my interference."

3.I have heard Mr.R.Vijayakumar, learned counsel appearing for the petitioner and also carefully perused the entire materials on record.

4.From the facts, it is seen that the petitioner entered appearance in the case and filed written statement. P.W.1 was examined in chief. The petitioner did not cross-examine the P.W.1 and was set ex-parte. Subsequently, that order was set aside after application



for recalling P.W.1. At that time, the petitioner filed I.A., for filing additional written statement. According to the petitioner, in the additional written statement he has raised the plea, of pecuniary jurisdiction. The Petitioner has not given any reason for not raising the same at the earliest and he filed the petition only to prolong the case. In the circumstances, the learned Judge considering all these facts, rejected the application filed by the petitioner by giving cogent and valid reason. The said order does not warrant interference by this Court.

5. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

29.02.2016

Sd/-

Assistant Registrar (RTI)

/True Copy/

Sub-Assistant Registrar

To

The Additional District Munsif Court, Tuticorin

+One cc to Mr. R. Vijayakumar, Advocate, SR.No.11523

am

RL/3C/SKS/RR/16/3/2016

C.R.P (MD) No.468 of 2016 (PD)

29/02/2016