

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.06.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.1825 of 2017
and C.M.P.No.8745 of 2017

A. Senthilkumar .. Petitioner

Vs.

1. K. Nirmala
2. R. Krishnasamy .. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and final order passed in I.A.No.607 of 2016 in O.S.Nos.672 of 2011 on the file of the learned I Additional District Judge, Coimbatore, dated 22.02.2017 and allow the revision petition.

For Petitioner : Mr. V. Sivakumar

ORDER

The Civil Revision Petition has been filed to set aside the fair and final order dated 22.02.2017 passed in I.A.No.607 of 2016 in O.S.Nos.672 of 2011 on the file of the I Additional District Court, Coimbatore.

2. The petitioner is the first defendant and the respondents are the plaintiffs in the suit in O.S.No.672 of 2011 on the file of the I Additional District Court, Coimbatore. The respondents filed the suit for partition by metes and bounds into two equal shares and allot one share in favour of the respondents and for a separate possession of the same, and for a mandatory injunction directing the Commissioner, Coimbatore Municipal Corporation, Coimbatore, to change the name in the Tax Assessment Register as per the partition.

3. The short facts of the case are that the second respondent-Krishnasamy, the husband of the first respondent, and Saroja the mother of the petitioner, inherited the suit properties from their ancestors. Subsequently, they orally partitioned the properties. The property comprises of two houses. One house was allotted to Krishnasamy and the other house was allotted to Saroja. From the date of oral partition, both of them are in possession and enjoyment of the property allotted to them. The said Krishnasamy rented out his share of property to the tenants and collected rents. The said Krishnasamy executed a settlement deed in favour of his wife, the first respondent, and in order to effect mutation in the Tax

Department, applied for the same before the Commissioner, Municipal Corporation, Coimbatore. Since no action was taken by the said Department, the respondents filed a writ petition before this Court, and obtained a direction from this Court to dispose of the representation. But the Commissioner refused to transfer the same in favour of the first respondent, on the ground that the petitioner objected to the transfer. The petitioner denied the oral partition and division of suit properties. Therefore, the respondents instituted the partition suit.

4. The petitioner filed written statement on 20.09.2012 and denied the oral partition and stated that the settlement deed executed by the second respondent in favour of the first respondent is null and void. According to the petitioner, his mother Saroja was in possession and enjoyment of the suit property, which was inherited from his maternal grandfather Ayyasamy, and after the demise of his mother, the petitioner is in continuous possession and enjoyment of the suit property and therefore, the settlement deed executed by the second respondent in favour of the first respondent is null and void.

5. Based on the pleadings, issues were framed. Thereafter, the petitioner filed an application in I.A.No.607 of 2016, seeking permission to file additional written statement. According to the petitioner, by inadvertence, perfection of his title by adverse possession, ouster and maintainability of suit, was omitted to be mentioned in the written statement filed by him. He is not well-versed in law, and his previous counsel did not take this plea in the written statement filed by the petitioner. When he changed his Advocate, and engaged the present counsel, he came to know about the non-inclusion of ouster and adverse possession and therefore, he has filed the application in I.A.No.607 of 2016.

6. Respondents filed counter and opposed the application filed by the petitioner.

7. The learned Judge, considering the averments in the affidavit, counter affidavit and materials on record, dismissed the application in I.A.No.607 of 2016, vide order dated 22.02.2017, holding that the petitioner is not entitled to file additional written statement, taking contrary plea to that of the plea taken in the original written statement.

8. Against the said order of dismissal dated 22.02.2017 in I.A.No.607 of 2017, the petitioner has filed the present civil revision petition.

9. Heard the learned counsel appearing for the petitioner and perused the materials available on record.

10. The petitioner has filed the application in I.A.No.607 of 2016 under Order 8 Rule 9 and Section 151 of CPC, seeking permission to file additional written statement. As per this provision, no pleadings subsequent to the written statement can be filed without permission of the Court except defence to set-off or the counter claim made by the petitioner in the written statement and the Court shall grant permission only if it thinks fit. It makes it clear that permission to file pleadings i.e., reply statement or additional written statement, is the discretionary power of the Court. This has to be exercised judicially. The Court has to see that if such additional written statement is not taken on file, the controversy between the parties, could not be decided. In the present case, the respondents are seeking partition on the ground that the petitioner is denying oral partition and contending that the settlement deed

executed by the husband of the first respondent is null and void. The petitioner has stated in the written statement that his mother Saroja was in possession and enjoyment of the property. The petitioner has not stated in his written statement that his mother and subsequently, the petitioner, is in possession and enjoyment of the property as owner of the property openly to the knowledge of the respondents. Even in the additional written statement sought to be filed by the petitioner, he has not stated the period from when his mother and himself are in possession and enjoyment of the suit property as owner, except stating that, the respondents did not make any claim for more than the statutory period, and it would amount to passive acceptance of right, title and interest of the petitioner in the suit property. The petitioner has not accepted the title of the respondents and is contending that he is the absolute owner of the suit property. Having taken such a stand, it is not open to the petitioner to take a plea contrary to the said stand that he has perfected the title by adverse possession. Such pleadings can be accepted in a case where it would not prolong the trial or cause delay in progress of the suit. In the present case, the trial has commenced, and P.W.1 was examined in chief. If permission is granted to the petitioner to file additional written statement with

inconsistent stand to the original stand taken in the written statement, the trial could not be proceeded with and further, it has to be started from the stage of filing of reply statement and framing of issues. The reason given by the petitioner for filing additional written statement is not a valid reason, and it is not acceptable. The reason given by the petitioner for not taking plea of adverse possession, and ouster, is that his previous counsel did not advise him to take such plea. The attitude of the litigant in blaming his previous counsel, should not be encouraged. Hence, there is no illegality or infirmity in the order of the learned I Additional District Judge, Coimbatore, warranting interference by this Court.

10. In the result, the civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

सत्यमेव जयते

12.06.2017
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Speaking order/Non-speaking order
Index : Yes / No
Internet : Yes / no

WEB COPY

V.M.VELUMANI,J.

ds

To :

The I Additional District Judge,
Coimbatore.



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