

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.394 of 2014
& M.P.No.1 of 2014

Muni Reddy

.. Petitioner

Vs.

1.Rama Reddy

2.Sadananda

3.Subbamma

4.Rathnamma

5.Pramila

6.M/s.Kogg Farm PVT. Ltd.,

Rep. By Major Promod Kapur,

8th floor,

Eros Apartments,

56, Nehru place,

New Delhi 110 019.

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 13.08.2013, made in I.A.No.571 of 2012 in O.S.No.13 of 2009 on the file of the Subordinate Court, Hosur.

For Petitioner	: Mr.VR.Shanmuganathan
For R1	: No appearance
For R2 & R6	: No appearance
For R3 & R4	: Mr.J.Hariharan for Mr.V.Nicholas
For R5	: No appearance

ORDER

This Civil Revision Petition is filed against the fair and decretal order dated 13.08.2013, made in I.A.No.571 of 2012 in O.S.No.13 of 2009 on the file of the Subordinate Court, Hosur.

2.The petitioner is the first defendant, first respondent is the plaintiff and respondents 2 to 6 are the defendants 2 to 6 in O.S.No.13 of 2009 on the file of the Subordinate Court, Hosur. The first respondent filed the said suit for partition against the petitioner and respondents 2 to 6. The petitioner filed written statement. The respondents 3 to 5 filed written statement on 17.09.2009. Subsequently, when the suit was posted for trial, the respondents 3 and 4 filed I.A.No.81 of 2012 under Order VIII Rule 9 C.P.C for permission to file additional written statement. On the same day, the said application was ordered and additional written statement was taken on file. The petitioner filed present I.A.No.571 of 2012 under Section 151 of C.P.C to set aside the order and discard the fresh written statement filed by the respondents 3 and 4. According to the petitioner, the respondents 3 to 5 engaged separate Advocate by name T.Sankar for themselves and gave instructions for preparing the written statement and they filed written statement on 17.09.2009. Subsequently, misunderstanding arose between the

petitioner and respondents 3 and 4 due to matrimonial matters. The respondents 3 and 4 colluded together with the first respondent / plaintiff and filed additional written statement contrary to the earlier written statement filed by them along with I.A.No.81 of 2012. In the said application, no notice was issued to the petitioner. The respondents 3 and 4 without giving notice to the petitioner, in collusion with first respondent played fraud on the Court and got permission from the Court to file additional written statement. In the additional written statement, the respondents 3 and 4 have taken a stand adverse to the interest of the petitioner, the petitioner is entitled to notice and he must be heard before any order is passed.

3.The respondents 3 and 4 filed counter affidavit and contended that taking advantage of innocence and illiteracy of respondents 3 and 4, the petitioner has taken their signature in the vakalat and typed papers and filed the written statement to suit his case, contrary to the interest of respondents 3 and 4. In the circumstances, they have filed the application, I.A.No.81 of 2012 for permission to file additional written statement.

4.The learned Judge considering the averments in the affidavit and counter affidavit and materials on record, dismissed the application.

5.Against the said order dated 13.08.2013, made in I.A.No.571 of 2012 in O.S.No.13 of 2009, the present Civil Revision Petition is filed by the petitioner.

6.Heard the learned counsel for the petitioner as well as the respondents 3 and 4 and perused the materials available on record. The learned counsel for the parties reiterated the averments in the affidavit, counter affidavit and grounds of revision. The learned counsel for the petitioner, in support of his contentions, relied on the judgments:

(i) 2005-4-L.W.482 (Chandra and others Vs. Ranganathan)

(ii) 2015-3-L.W.336 (Chinnammal Vs. Prakash rep by his Power Agent Eswaran)

7.The contention of the learned counsel for the petitioner that without notice to the petitioner, the learned Judge erroneously allowed the application for filing additional written statement which is contrary to the earlier written statement and adverse to the

interest of the petitioner has considerable force. It is well settled that a party cannot withdraw the admission made by him either in the plaint or in the written statement to the prejudice of other party. It is also well settled that the defendant is not entitled to file additional written statement contrary to the stand taken in the earlier written statement. The defendant cannot set up totally a new case or state facts at direct variance with original written statement, so as to completely change the issue in the case. The learned Judge has held that an admission made in the earlier written statement cannot be withdrawn by filing additional written statement. Having held so, the learned Judge erred in holding that the real intention of the respondents 3 and 4 can only be known when they are examined as witnesses at the time of trial of the suit. Whether the respondents 3 and 4 take their stand as per the written statement or as per the additional written statement can be known only while being examined as witnesses at the time of trial. This reasoning of the learned Judge is erroneous and contrary to the well established judicial pronouncements. By this conclusion, the learned Judge has indirectly held that the respondents 3 and 4 have taken contradictory stand in the additional written statement from that of the stand taken in the earlier written statement. Further, from the impugned order, it is seen that the respondents 3 and 4 have not

withdrawn the earlier written statement filed by them and both original written statement as well as the additional written statement containing contradictory stand taken by the respondents 3 and 4 are on the file. By the reasoning in the impugned order, the learned Judge has committed an irregularity and failed to exercise his power conferred on him properly. In view of the above, the impugned order of the learned Judge is liable to be set aside and is hereby set aside. The I.A.No.571 of 2012 in O.S.No.13 of 2009 is allowed, directing the learned Judge to return the additional written statement taken on file to the counsel for the respondents 3 and 4 and not to consider the additional written statement at the time of trial.

8.In the result, this Civil Revision petition is allowed. However, there is no order as to costs. Consequently, connected Miscellaneous Petition is closed.

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12.12.2017

Index: Yes/No
gsa

V.M.VELUMANI,J.

gsa

To

The Subordinate Judge,
Hosur.



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