

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY

C.R.P.(PD).No.842 of 2017
and C.M.P.No.4128 of 2017

N.Ponnusamy

... Petitioner

Vs.

K.Muthusamy

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 05.12.2016 made in I.A.No.1026 of 2016 in O.S.No.38 of 2011 on the file of the I Additional District Munsif, Erode.

For Petitioner : Mr.T.Jeevanantham

For Respondent : Mr.A.Sundaravadhanan

ORDER

Challenging the order passed in I.A.No.1026 of 2016 in O.S.No.38 of 2011 on the file of the I Additional District Munsif, Erode, the 1st defendant has filed the above Civil Revision Petition.

2.The plaintiff filed the suit in O.S.No.38 of 2011 for declaration and permanent injunction.

3.The suit was filed in the year 2011 and the 1st defendant filed his written statement on 10.09.2012. Thereafter, the trial Court framed issues and the suit was taken up for trial.

4.After the commencement of trial, the 1st defendant filed an application in I.A.No.1026 of 2016 under Order VIII Rule 9 of the Civil Procedure Code to permit him to file additional written statement. In the affidavit filed in support of the petition, the 1st defendant has stated that at the time of filing of the written statement in the year 2012, some important material defences were not raised, therefore, he sought permission of the Court to file additional written statement.

5.The suit is pending from 2011 and when the 1st defendant has filed the written statement in the year 2012, he chose to file the present application seeking for permission to file additional written statement only on 08.11.2016, that too, after the commencement of the trial. That apart, the present suit (i.e.) O.S.No.38 of 2011 is being jointly tried along with the suit in O.S.No.266 of 2010 and seven other suits. In other words, nine suits are tried jointly and only in the present suit in O.S.No.38 of 2011, the 1st defendant has filed the present application seeking to file additional written statement. The trial Court, while dismissing the application, observed that

the suits are nearing argument stage and at this stage, the 1st defendant has filed the present application, after a span of six years. The trial Court has rightly observed that the present application is filed at a belated stage, which cannot be entertained.

6.The learned counsel appearing for the petitioner relied upon the following judgments:

(i)2002-3-L.W. 597 [Soundaraessane @ Soundaressin @ Soundaraju repled. By his Power of Attorney Toulukkanam Radjam Vs. Pouchepavady @ Pouchepagandy and two others] wherein this Court held that in the absence of prejudice being caused by such subsequent pleading, the discretion conferred on the Court under Order VIII Rule 9 can be exercised liberally.

(ii)2005 (5) CTC 38 [Radhabai Ammal and another Vs. N.Loganathan and others] wherein this Court held that an application under Order VIII Rule 9 of the Civil Procedure Code can be filed even during the pendency of the appeal.

7.In the case on hand, based on the available pleadings, the trial Court had framed issues and took up the matters for trial. If the 1st

defendant is allowed to file the additional written statement at this stage, it will definitely prejudice the plaintiff.

8.The learned counsel appearing for the respondent submitted that the 1st defendant had made some vital admission during his examination, therefore, if the 1st defendant is allowed to file additional written statement, it will definitely prejudice the plaintiff.

9.The trial Court, taking note of all these aspects, rightly dismissed the application. Since the facts and circumstances of the present case are different, the judgments relied upon by the learned counsel for the petitioner are not applicable.

10.In these circumstances, I do not find any error or irregularity in the order passed by the trial Court. The Civil Revision Petition is devoid of merits and is liable to be dismissed. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Index : No
Internet : Yes
va

10.03.2017

To

The I Additional District Munsif,
Erode.

M.DURAIWAMY,J.
va

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