

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **13.02.2017**

CORAM

THE HON'BLE MRS.JUSTICE **PUSHPA SATHYANARAYANA**

CRP PD.No.648 of 2014
and
M.P.No.1 of 2014

T.Rajkumar

.. Petitioner

vs

1. Dr.Palaniappan

2. Balasubramaniyan

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 12.12.2013 passed by the learned Additional District Munsif, Chidambaram in I.A.No.289 of 2013 in O.S.No.252 of 2009.

For Petitioner : Mr.S.Raj Makesh

For Respondents : Mr.N.Sankaravadivel
for R1

R2-Served
No appearance

ORDER

The second defendant has preferred this revision challenging the dismissal of the application refusing to receiving the additional written statement filed by him under Order 8 Rule 9 of the Code of Civil Procedure.

2. Heard the learned counsel for the petitioner and the learned counsel appearing for R1. Despite service being effected, there is no representation on behalf of the second respondent either in person or through the counsel.

3. The first respondent/plaintiff herein originally filed a suit in O.S.No.252 of 2009 for a bare injunction. The written statements were also filed by the defendants. Only after the written statement was filed, the plaintiff filed an amendment petition seeking the relief of declaration of title, which was allowed by the trial court. After the amendment was allowed,

the revision petitioner was also permitted to file additional written statement. Hence, he has filed the application under Order 8 Rule 9 of the Code of Civil Procedure to receive the additional written statement. It is stated by the second defendant that while filing the additional written statement, by oversight, he has omitted to raise an important plea of pecuniary jurisdiction of the Court, after the amendment petition of the plaintiff was allowed. However, the said application was dismissed by the Court below by giving a finding that it would be inappropriate at this juncture to entertain the said plea.

4. Aggrieved by the said order, the present revision has been filed.

5. It is the case of the revision petitioner/second defendant that the suit has been under valued and the Court fees paid is also incorrect. Hence, to raise the plea of pecuniary jurisdiction the additional written statement is now sought to be filed, however at the stage of cross examination of PW1. The said application was rejected by the Court below as the same is filed

after 1-1/2 years from filing the earlier written statement. The improper valuation of the Court fee or the pecuniary jurisdiction can be entertained by the Court at the hearing of the suit itself. But, now, after the trial has commenced when PW1 is being cross-examined the said application is filed, hence, the trial court has dismissed the same.

6. It is settled law that the Court has to take a lenient view in granting leave to file an additional written statement. Only if the defendant introduces an entirely a different case in the additional written statement so as to prejudice the other side, the application has to be rejected. It is only the question of jurisdiction and the valuation is now raised by the second defendant, by way of filing the additional written statement. The second defendant has not explained the reason for the 1-1/2 years delay in filing the additional written statement, in fact, he was already granted permission to file an additional written statement when the amendment petition filed by the plaintiff was allowed. Therefore, the second defendant cannot be allowed to file written statement, in piece-meal at any time, he chooses.

The second defendant by way of the additional written statement is only projecting about the improper valuation of the suit and the insufficiency of the Court fees paid.

7. As rightly held by the trial court, even in the absence of the additional written statement and the specific plea taken by the second defendant, the Court is empowered to formulate an issue on these aspects and give its finding on the same. For the said reason, the additional written statement need not be filed.

8. In such circumstances, I do not find any infirmity in the order passed by the Court below in rejecting to receive the additional written statement. Accordingly, the revision fails and the same is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

13.02.2017

vj2

Index : Yes/No

Internet: Yes

To

The Additional District Munsif, Chidambaram

PUSHPA SATHYANARAYANA,J.,

vj2

CRP PD.No.648 of 2014

13.02.2017

<http://www.judis.nic.in>