

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 23.12.2016

Pronounced on 03.01.2017

DATED: 03.01.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRP.No.4041 of 2010
and
M.P.No.1 of 2010

V.R.Sundararajan ... Petitioner

Vs.

D.Neelaveni ...Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the Fair and Decreetal Order dated 17.08.2010 in I.A.No.420 of 2010 in O.S.No.558 of 2008, on the file of III Additional Subordinate Court, Coimbatore.

For Petitioner : Mr.T.R.Rajaraman

For Respondents : Mr.K.Govi Ganesan

O R D E R

The 3rd defendant is the revision petitioner before this Court, challenging the order of dismissal passed in I.A.No.420 of 2010 in O.S.No.558 of 2008, dated 17.08.2010, on the file of III Additional Subordinate Court, Coimbatore.

2.Originally the respondent/plaintiff filed the suit in O.S.No.558 of 2008, against the defendant for partition of the suit property.

3.Denying the averment made in the above suit, the third defendant has filed the written statement.

4.While pendency of the above suit, this petitioner/3rd defendant has filed I.A.No.420 of 2010 for receiving additional written statement filed under Order 8 Rule 9 and Section 151 of CPC.

5.The case of the petitioner/3rd defendant is that the respondent/plaintiff has filed the above suit against him along with three others for partition and other reliefs. Though in the said suit, he has filed the written statement and the respondent/plaintiff has also filed his reply statement.

6.The 3rd defendant has stated that his father namely Rangaiya Naidu has executed a Will in respect of the suit property in favour of this petitioner/3rd defendant on 11.07.1980 and the said Will was registered as Doc.No.44 of 1980 before the Sub-Registrar Office. In the said Will, this petitioner/3rd defendant's brother Mr.V.R.Venkatatesan, who is the first defendant in the suit was one of the attesor of the Will, and the said original Will was with the hands of the first defendant Mr.V.R.Venkatesan, but the said Mr.V.R.Venkatesan was exparte in the suit. Likewise other defendants 2 and 4 also set exparte. Since they were married during his father's life time and living separately with their families and therefore, he has filed the additional written statement by narrating the above facts and prayed the trial Court to allow the said application in I.A.No.420 of 2010.

7.Denying the above affidavit filed in above I.A.No.420 of 2010, the respondent/plaintiff has filed counter statement denying the execution of Will dated 11.07.1980 registered as Doc.No.44 of 1980 and also equally denied that the said original Will was in the hands of Mr.V.R.Venkatesan, who is the first defendant in the suit.

8.The respondent also states that there was no Will executed by his father and it is only on the stretch of imagination and the third defendant purposely created new facts after commencing of the trial and even completion of the plaintiff's side evidence and the raising these averments only to defend his case.

9.The respondent also states that the application for raising additional written statement was received only to drag on the proceedings. Apart from this, the respondent/plaintiff states that in the affidavit there was no reason given in the affidavit filed in I.A.No.420 of 2010 for filing additional written statement. Therefore, the third defendant has not entitled to file the additional written statement. The respondent/plaintiff have also raised the ground that he was not raised or stated in the above Will dated 11.07.1980 in his original written statement. Therefore, only to drag the proceedings and he sought for the trial Court for the dismissal of the said application for receiving additional written statement.

10. Considering both sides arguments, the learned III Additional Sub-Judge, Coimbatore has dismissed the application on 17.08.2010 on the ground stating that originally, the plaintiff filed the application for amendment in I.A.No.130 of 2009 and thereafter, the plaintiff was permitted to amend the plaint, the plaintiff has filed the amended plaint copy and the suit was posted on 27.01.2010 and after receipt of the amended plaint copy the petitioner/third defendant herein was served with an opportunity of filing his additional written statement, but after took almost 35 days time, the learned counsel appearing for the petitioner/third defendant has made an endorsement on the plaint, on 04.03.2010 that there was no additional written statement. But, after making such endorsement on 04.03.2010, now the third defendant wants to file his additional written statement after commencement of trial and also examination of two witnesses were over in the plaintiff's side, which clearly reflects the intention of the defendant that he wants to fill up the lacuna in his case.

11. The learned Judge also states that if the additional written statement is received definitely prejudiced should be caused to the plaintiff and it may also lead to a fresh trial once again and he has also not stated in his affidavit as to why the alleged additional averments made in the additional written statement have not been stated in the original written statement. On considering the judgment passed by this Court reported in 2007 1 CTC 586 and 2000 (1) L.W. 420, the learned Judge has dismissed the application.

12. Admittedly, there was an averment made by the third defendant about the Will dated 09.04.2010 in his written statement, and on gone through the original written statement filed by the third defendant dated 29.04.2009 in para-5 it was stated as follows:

"Registered Will on 11.07.1980 under registered document No.44/1980 in favour of this defendant viz. V.R.Sundarajan."

13. As per the provisions under Order 8 Rule 9 and Section 151 of CPC, it is stated as follows:

"Order 8 Rule 9-Subsequent pleadings.-No pleading subsequent to the written statement of a defendant other than by way of defence to set-off or counter-claim shall be presented except by the leave of the Court and upon such terms as the Court thinks fit; but the Court may at any time, require a written statement or additional written statement from any of the parties and fix a time of not more than thirty days for presenting the same.

Section 151 of CPC-Saving of inherent powers of Court.-Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court."

14. Therefore, it is made clear the Additional Written Statement can be filed and hence, in the interest of justice, this civil revision petition ought to be allowed by setting aside the order passed in I.A.No.420 of 2010 and accordingly the order passed in I.A.No.420 of 2010 in O.S.No.558 of 2008, dated 17.08.2010, is set aside. But, after long period, this third defendant has filed this Additional Written Statement, but the third defendant should compensate the delay by way of paying cost to the respondent/plaintiff.

15. In the result:

(a) this civil revision petition is allowed by setting aside the order passed in I.A.No.420 of 2010 in O.S.No.558 of 2008, dated 17.08.2010, on the file of the III Additional Subordinate Court, Coimbatore, on condition that the petitioner should pay a cost of Rs.1000/- to the respondent/plaintiff within a period of one week from the date of receipt of a copy of this order.

(b) the respondent/plaintiff is hereby directed if any reply has to be filed for the additional written statement, he must be filed within a period of two weeks from the date of receipt of a copy of this order.

(c) the learned trial Court is directed to dispose the suit within a period of two months, on day to day basis without giving any adjournment to either parties. Both the parties are hereby directed to co-operate for early disposal of the suit.

16. Accordingly, the civil revision petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vs

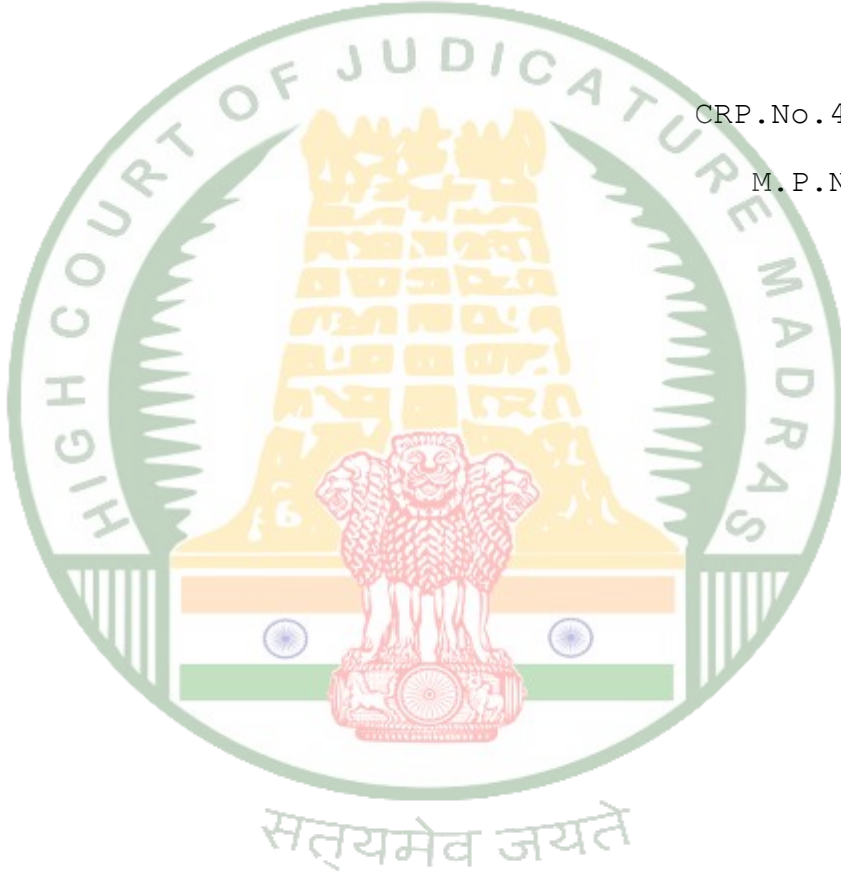
To

The III Additional Subordinate Judge,
Coimbatore.

+1cc to Mr.T.R. Rajaraman, Advocate, S.R.No.25
+1cc to Mr.K. Goviganesan, Advocate, S.R.No.488

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