

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.09.2017

CORAM:

**THE HONOURABLE MS.JUSTICE V.M.VELUMANI**

C.R.P.(PD)No.518 of 2010  
& M.P.No.1 of 2010

Lakshmi

.. Petitioner

Vs.

Rajakumari

.. Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 02.12.2009 made in I.A.No.815 of 2009 in O.S.No.12 of 2009 on the file of the Additional Subordinate Court at Virudhachalam.

For Petitioner : Mr.V.B.Perumalraj  
for Mr.V.Ayyadurai

For Respondent : No appearance

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ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 02.12.2009 made in I.A.No.815 of 2009 in O.S.No.12 of

2009 on the file of the Additional Subordinate Court at Virdhachalam.

2. The petitioner is defendant and respondent is the plaintiff in O.S.No.12 of 2009. The respondent filed suit for partition. The petitioner filed written statement on 06.03.2009 and is contesting the suit. After commencement of trial, conclusion of evidence, the respondent filed I.A.Nos.814 and 815 of 2009 for reopen the case and receive the reply statement.

3. The petitioner filed counter affidavit and denied the averments in the affidavit filed in support of the application. She submitted that the respondent has already filed I.A.No.724 of 2009 under Order VI Rule 17 of C.P.C. setting out the very same facts and the said I.A.No.724 of 2009 was dismissed. In view of the same, the present application is hit by the principles of resjudicata. The respondent is trying to achieve indirectly, as she could not have achieved directly.

4. The learned Judge considering the averments made in the affidavit, counter affidavit and materials on record, allowed the said application holding that as per Order VIII Rule 9 of C.P.C., additional

pleading can be filed at any point of time.

5. Against the said order dated 02.12.2009 made in I.A.No.815 of 2009, the present Civil Revision Petition is filed by the petitioner.

6. Heard the learned counsel for the petitioner and perused the materials available on record. Though notice was served on the respondent and his name is printed in the cause list, there is no representation on behalf of the respondent either in person or through counsel.

7. From the averments made in the affidavit filed in support of the application for permission to file reply statement, it is seen that the respondent has stated that on legal advice, she has filed the present application for permission to file reply statement. The respondent has not stated as to why she did not file the said application earlier. The delay in filing such application is not a criteria for dismissing the application for permission to file additional pleadings as per Order VIII Rule 9 of C.P.C., but the power to grant such permission is the discretion of the Court, which has to be

exercised judicially based on the facts and circumstances of the case. In the present case, the respondent has not denied the earlier application in I.A.No.724 of 2009 filed under Order VI Rule 17 of C.P.C. setting out the very same averments, was dismissed on merits. The learned Judge has not only failed to consider these facts but also the fact that the respondent has not given any reason for filing the present application at a belated stage. The learned Judge has failed to exercise his power conferred on him and committed error in allowing the application.

8. In the result, the Civil Revision Petition is allowed by setting aside the order dated 02.12.2009 made in I.A.No.815 of 2009. No costs. Consequently, connected miscellaneous petition is closed.

22.09.2017

Index : Yes/No

kj

To

The Additional Subordinate Court  
Virdhachalam. .

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**V.M.VELUMANI, J.**

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