

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2017

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (PD) No.3412 of 2012
and
M.P.No.1 of 2012

Arokiya Mary .. Petitioner

vs

Amburos .. Respondent

Revision filed under Article 227 of Constitution of India against the order passed in I.A.No.662 of 2011 in O.S.No.74 of 2009 dated 29.2.2012 on the file of the Principal Sub Judge, Villupuram.

For Petitioner : Mr.N.Suresh

For Respondent : No Appearance

सत्यमेव जयते
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ORDER

This revision is directed against the order of the Principal Sub Judge, Villupuram in I.A.No.662 of 2011 in O.S.No.74 of 2009, dismissing the application filed by the petitioner under Or.8, Rule IX of Code of Civil Procedure, 1908, to permit her to file an additional written statement. The petitioner is the defendant and the respondent is the plaintiff in the suit.

2 The plaintiff/respondent herein has filed the suit for partition and separate possession of his half share in the suit property; permanent injunction restraining the petitioner herein from constructing any building and also permanent injunction restraining the petitioner from selling the suit property to any third party and for costs. Resisting the suit, the petitioner has filed her written statement

3. The petitioner has filed I.A.No.662 of 2011 to permit her to file additional written statement stating that at the time of filing the written statement, due to inadvertence, some important facts have been omitted and she was advised to raise the same by filing an additional written statement. In the affidavit filed in support of the application, the petitioner averred that she has not introduced any new facts by way of additional written statement and therefore, she sought permission of the Court to file additional written statement.

4. The said application was resisted by the respondent herein contending that the averments in the affidavit are totally false and that the additional written statement has been filed belatedly. The contents in the original written statement and the additional written statement are totally different and therefore, prayed for dismissal of the application.

5. Upon consideration of the rival submissions, the trial Court dismissed the application holding that if the additional written statement is received, opportunity has to be given to the respondent to file his reply and new issues have to be framed and the trial has to be commenced from beginning itself. Aggrieved by the order of dismissal of the application, the petitioner has filed the present revision.

6. Heard Mr.N.Suresh, learned counsel appearing for the petitioner. There is no representation on behalf of the respondent, even though the name of the respondent has been printed in the cause list.

7. Learned counsel for the petitioner submits that the trial Court having found that an additional written statement can be received even if it is filed belatedly, ought to have allowed the application. He further submitted that the trial Court ought to have seen that defendant in a suit is entitled to take not only a fresh plea, but also an inconsistent plea and prays for setting aside the order of the trial Court.

8. It is seen from the order of the trial Court that the trial has commenced and the plaintiff was examined as P.W.1 and Ex.A1 to A5 were marked. When the suit was listed for cross-examination of P.W.1, the petitioner has filed the application to permit her to file the additional written statement.

9. In the order, the trial Court observed that the original written statement and the additional written statement are contradictory with each other and that the petitioner has introduced a new case and that if the additional written statement is received, an opportunity has to be given to the respondent to file his reply and new issues have to be framed.

10. The said observation of the trial Court, in my view, is not acceptable for the reason that the respondent alone has been examined as P.W.1 in chief and no other witnesses were examined and the evidence on the respondent's side is not yet concluded. The respondent, who was examined as P.W.1, has to be cross-examined by the petitioner side. At this stage, if the application to permit the petitioner to receive additional written statement is allowed, no prejudice would be caused to the respondent. Further, the respondent has every right to file his reply/rejoinder to the additional written statement. Moreover, based on the pleadings, additional issues, if need be, can be framed by the trial Court.

11. It is pertinent to point out that the respondent and the husband of the petitioner are blood brothers and suit has been filed for partition and separate possession of respondent's half share and for permanent injunction. On a perusal of the written statement of the petitioner annexed to the typed set of papers, this Court finds that in paragraph 12, it has been stated that the petitioner reserves her right to file the additional written statement, if any facts are omitted to be mentioned in the written statement. Denying the said reservation, the plaintiff has not filed any objection. As stated supra, the plaintiff has right to file rejoinder to the additional written statement. The reasons given by the trial Court in dismissing the application are cannot be countenanced and are unsustainable in law. Without going into the merits of the averments pleaded in the written statement and the additional written statement and also other contentious points, in the interest of justice, this Court is inclined to permit the petitioner to file the additional written statement.

12. In the result, the order of the trial Court in I.A.No.662 of 2011 in O.S.No.74 of 2009 dated 29.2.2012 is set aside and the Civil Revision Petition is allowed. The respondent is permitted to file reply/rejoinder to the additional written statement within a period of two weeks. The trial Court is directed to dispose of the suit within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, M.P.No.1 of 2012 is closed. It is made clear that observations, if any, in this order, touching upon the rights of the parties in the suit, will not prevent the trial Court in deciding the issues involved in the suit on merits.

03.01.2017

Note: Issue order copy on 29.12.2017

vs

Index : Yes/No

Internet : Yes/No

To

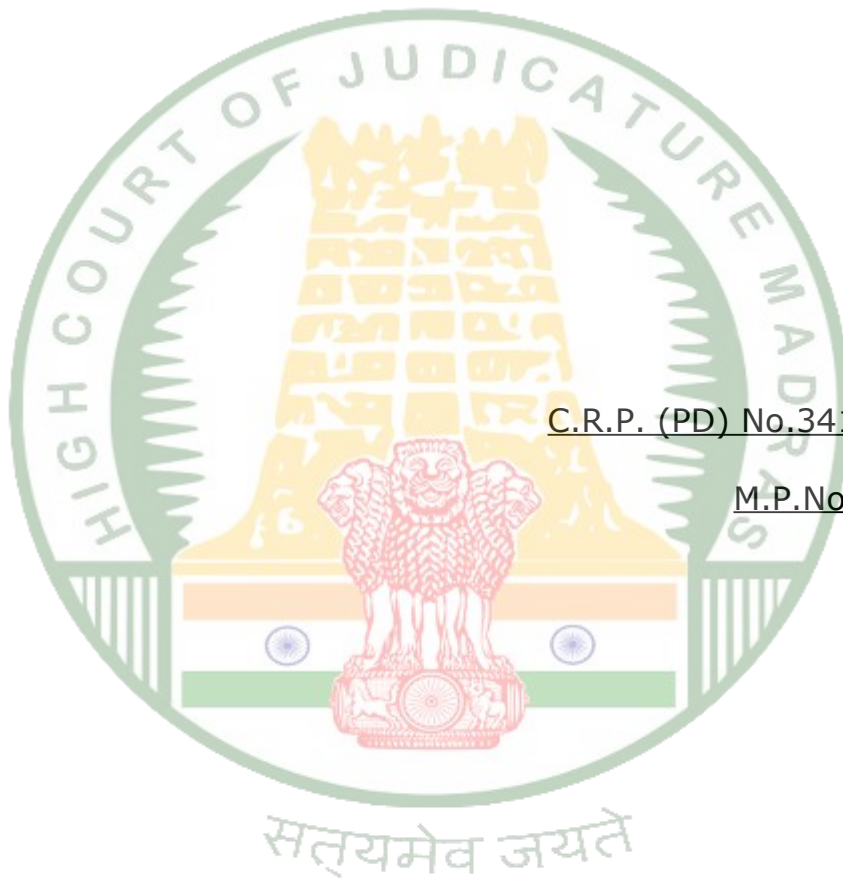
The Principal Sub Judge, Villupuram.

Office to note :-

Send order copy (along with records, if any)
to the trial Court, forthwith.

M.V.MURALIDARAN, J.

VS



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