



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.03.2017
(Reserved on 10.03.2017)

WEB COPY

CORAM :

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CRP (PD) (MD) No.491 of 2017
and
C.M.P (MD) No.2320 of 2017

1) N.Thangammal
2) N.Ilangovan
3) T.Arumugam

... Petitioners

vs.

T.K.Chinnasamy Pillai
Through his Power Agent
Mayilvel,
S/o.Kandasamy Pillai,
No.1A/2, 1st Street,
Jaihindpuram,
Madurai-11.

... Respondent

Petitions filed under Article 227 of the Constitution of India, to set aside the Order and decretal order dated 12.01.2017 passed in I.A.No.246 of 2016 in O.S.No.84 of 2005 on the file of the Principal District Munsif, Manamadurai.

For Petitioners : Mr.V.Nagendran

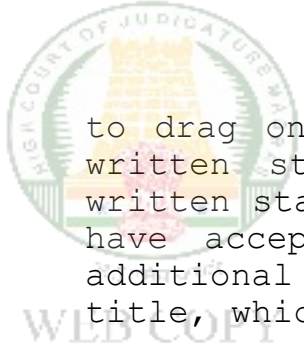
For Respondent : Mr.V.Rama Krishnan

ORDER

This revision petition is filed against the dismissal of the interlocutory application filed by the defendants to receive additional written statement.

2.The said application to receive additional written statement has been filed after framing of issues. When the suit is pending for cross-examination of PW1, the defendants want to bring certain facts to the knowledge of the Court which happened subsequent to the filing of the suit.

3.This application was opposed by the respondent/plaintiff on the ground that the said application is filed after 11 years from the date of institution of the suit and 8 years from the date of commencement of the trial. The intention of the defendants is only



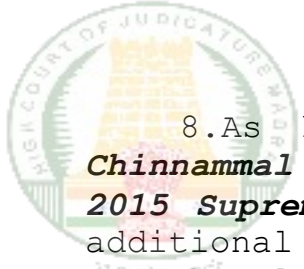
to drag on the proceedings and the application to file additional written statement is contrary to the pleadings in the earlier written statement. In the earlier written statement, the defendants have accepted the plaintiff as the landlord. Now through the additional written statement, an attempt is made to dispute the title, which is contrary to the earlier admission.

4.The Trial Court after considering the rival submissions and the documents filed by both sides, held that the defendants are introducing new facts with inconsistent pleas, which cannot be allowed and referring to the judgment of the Hon'ble High Court reported in 2015 (3) LW 336, the Trial Court dismissed the application.

5.Aggrieved by the abovesaid impugned order, the present revision petition is filed on the ground that the lower Court has failed to look into important and subsequent events which are to be brought to the knowledge of the Court to decide the issue. The documents Ex.P1 and P2 which are sought to be relied upon by the defendants will destabilize the case of the plaintiff and if the document is not admitted, the case of the defendants will be affected.

6.Per contra, the counsel for the respondent submitted that the intention of the petitioners is to drag on the proceedings as far as possible and therefore, after filing the written statement in the month of November 2005 and after the plaintiff was examined in chief in the year 2008, without cross examining the plaintiff, the defendants are indulging in delaying tactics, by filing one petition after another. The defendants also preferred writ petition and obtained stay of further proceedings of the suit. After the dismissal of the writ petition, the trial has commenced. But, just to delay further, the revision petitioner has filed the suit in O.S.No.54/2010 before the Sub Court, Sivagangai and tries to introduce new facts in the present suit which was filed in the year 2005.

7.The right of filing additional written statement is conferred under Order 8 Rule 9 CPC wherein, subsequent pleading can be made subject to leave of the Court. However, when the pleading is in the nature of counter-claim or set-off, it shall be in consonance with the procedure and limitation laid under Order 8 Rule 6A. The content of the additional written statement based on the alleged subsequent event is totally inconsistent to the written statement filed by the revision petitioners in the year 2005. The plea now tries to be introduced was very well available with the defendants even when the earlier written statement was filed in the year 2005. But, having allowed the Court to frame issues with particular set of facts and after examination of PW1 in chief, it is not permissible for the defendants to make an allegation inconsistent to their previous pleading.



8.As held in the judgment rendered by our High Court in **Chinnammal vs. Prakash rep. by his Power Agent Eswaran**, reported in **2015 Supreme (Mad) 1843**, introduction of inconsistent plea by way of additional written statement after the commencement of trial will put the plaintiff into prejudice.

Therefore, this Civil Revision Petition is dismissed. No costs. Consequently, C.M.P(MD)No.2320 of 2017 is closed.

Sd/-
Assistant Registrar(RTI)

/True Copy/

Sub-Assistant Registrar

To

The Principal District Munsif Judge,
Manamadurai.

+1 cc to MR.V.NAGENDRAN,ADVOCATE,SR NO.14534

+1 CC TO MR.V.RAMAKRISHNAN,ADVOCATE,SR NO.14643

nbi

MAS/SKN-RSK:21.03.2017:3P-4C

Pre-Delivery order made in
CRP(PD) (MD)No.491 of 2017
14.03.2017