

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.04.2018

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

CRP (PD) No.1348 of 2018
and CMP.No.7073 of 2018

Sivagami Rajagopalan

... Petitioner

-Vs-

1.P.Kalyanasundaram
2.Shantha Sakthivel
3.G.Banumathi

... Respondents

Prayer :- Civil Revision Petition filed under Article 227 of the Constitution of India, against the order and decretal order passed in I.A.No.86 of 2017 in O.S.No.1735 of 2009 dated 22.02.2018 on the file of Principal District Munsif, Coimbatore.

For Petitioner : Mr.V.V.Sairam

For Respondent : Mr.R.Venkatajalapathy [R1]

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ORDER

This revision is preferred against an order passed by the Principal District Munsiff, Coimbatore in I.A.No.86 of 2017 in O.S.No.1735 of 2009, dismissing an application filed by the petitioner/second defendant for receiving an additional written statement.

2. The brief facts that are necessary for the current purpose are stated as below:

- The plaintiffs have laid a suit for declaration of their title on the allegation that the suit property belonged to the first defendant, the mother of the parties herein, and claim exclusive title on the strength of a settlement deed executed by their mother dated 06.07.2006. Even prior to the settlement deed, their mother is said to have executed a deed of assurance dated 17.01.1997 in favour of the revision petitioner/second defendant, which the respondents/plaintiffs impugned in the suit.
- The suit was resisted by the revision petitioner with her written statement dated 03.09.2009, where under she would contend that her mother had revoked and cancelled the settlement deed dated 06.7.2006 that she had executed in favour of the respondents/plaintiffs and that she had subsequently executed a settlement deed in her favour on 30.04.2009.

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- On 29.02.2016, the trial of the case commenced and the respondent/plaintiff was examined in chief as PW.1 and case was posted for PW.1's cross-examination. In the meantime, the revision petitioner has preferred an application in I.A.No.86 of 2017 seeking leave of the Court for filing an additional written statement taking an alternate, if not

a plea inconsistent to the plea originally taken.

- This was rejected by the learned District Munsiff essentially on the ground that it was filed belatedly and that there is no need to file any additional written statement. This is now under challenge in this petition.

3. The pleadings made available in the typed set of papers would indicate that on the same property, there are at least four suits viz., O.S.No.2125 of 2007, O.S.No.1477 of 2009, O.S.No.720 of 2011 and O.S.No.1688 of 2010 pending to be resolved. The learned counsel for the respondent would intervene to mention that the list is incomplete and there are in all 7 suits including the present one pending. The ground of revision will also indicate that the respondent had filed Tr.O.P.Nos.124, 125 and 126 of 2017. It appears that O.S.No.1688 of 2010 has already been transferred for joint trial Vide orders in transfer petition by the District Court, Coimbatore.

4. The learned counsel for the petitioner submitted that there are Transfer Petitions pending for consolidation of suits and it is in this background, an additional written statement was filed even in the year 2014, which was not taken on file due to the pendency of these petitions, and when once that was disposed of, the petition was taken on file but dismissed on the ground of delay. The trial Court has lost sight of the fact that the pendency of the

Transfer Petition had hindered the Court from taking on its file I.A.86/2017 in time.

5. Resisting the contention of the learned counsel for the petitioner, the counsel for the respondents would argue that it has been held by the trial Court that there is absolutely no need to bring in new pleadings and it is only intended to delay the trial of the case. He also relied on the authorities in ***Thangammal & Another Vs. Saraswathi*** [CDJ 2016 MHC 7071] and ***Faridha Begum Vs. U.M.K.Batchha*** [CDJ 2017 MHC 1206]

6. The two aspects that weigh in favour of the revision petitioner are:

a) That the revision petitioner had filed her application to receive additional written statement even in the year 2014, at least two years before the commencement of the trial. This aspect has been overlooked by the trial Judge. Therefore, it cannot be said with any degree of certainty that the revision petitioner had required the trial court to receive additional written statement to delay the trial process.

b) PW1 has not yet been cross-examined and the line of defence is yet to be put forward to the plaintiff now in the box.

7. Having stated thus, it is also necessary to take into consideration the facts alleged in the additional written statement. The pith and substance of the cause of action involved in the suit is that the plaintiffs claim title over the suit

property, which has an extent of 6,721 sq.ft. in R.S.Puram, Coimbatore, with a residential building therein, on the basis of the settlement deed executed by their mother, the first defendant who is dead in '2006. Subsequently, on 15.05.2009, the same was revoked by the donor. Prior to the said revocation on 30.04.2009, she had executed the settlement deed in favour of the second defendant. It may be mentioned that the property conveyed under the settlement deed dated 06.07.2006 in favour of the plaintiffs and the one covered under the settlement deed dated 30.04.2009 in favour of the second defendant are the same.

8. The learned counsel for the respondents would now submit that the additional written statement bring in such facts, which are not very germane for deciding any of the issues, based on which the relief sought in the case cannot be granted, to which the counsel for the petitioner would respond that the allegation taken in the additional written statement only expatiate the contentions taken in the written statement of the second defendant.

9.1. The suit is essentially laid for declaring that the deed of cancellation dated 15.05.2009 and the deed of settlement dated 30.04.2009 are void and unenforceable, and also for declaring plaintiff's title based on the settlement deed dated 06.7.2006 in their favour. On a careful reading of the pleadings as are made available in the typed set of papers, it is apparent that the entire case revolve around : (a) the mental disposition of the first defendant in

executing the settlement deed in favour of the plaintiffs and (b) her power to

cancel the said settlement deed which she had executed in favour of the plaintiffs.

9.2. For the reasons indicated in paragraph No.8, this Court deems it appropriate now to allow this petition and direct the trial Court to take the additional written statement to its file. However, given the scope of the litigation, the trial Court is instructed that it must be vigilant during the trial and ensure that the parties do not travel into the realm of irrelevancies. The plaintiffs will have their right to file the re-joinder.

10. As indicated in paragraph No.6, in this subject matter there are at least five suits pending before different Court and it is informed that some transfer petitions are pending before the District Court, but de hors the transfer petitions, the parties here make a statement that they are willing for consolidation of the suits. Since the District Judge has got *suo motu* power to consolidate the suits, he is directed to exercise such powers after going through the pleadings in various cases and direct their consolidation. The trial Court is directed to complete the trial on or before 31.10.2018.

11. This petition is allowed in the manner as indicated above. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No

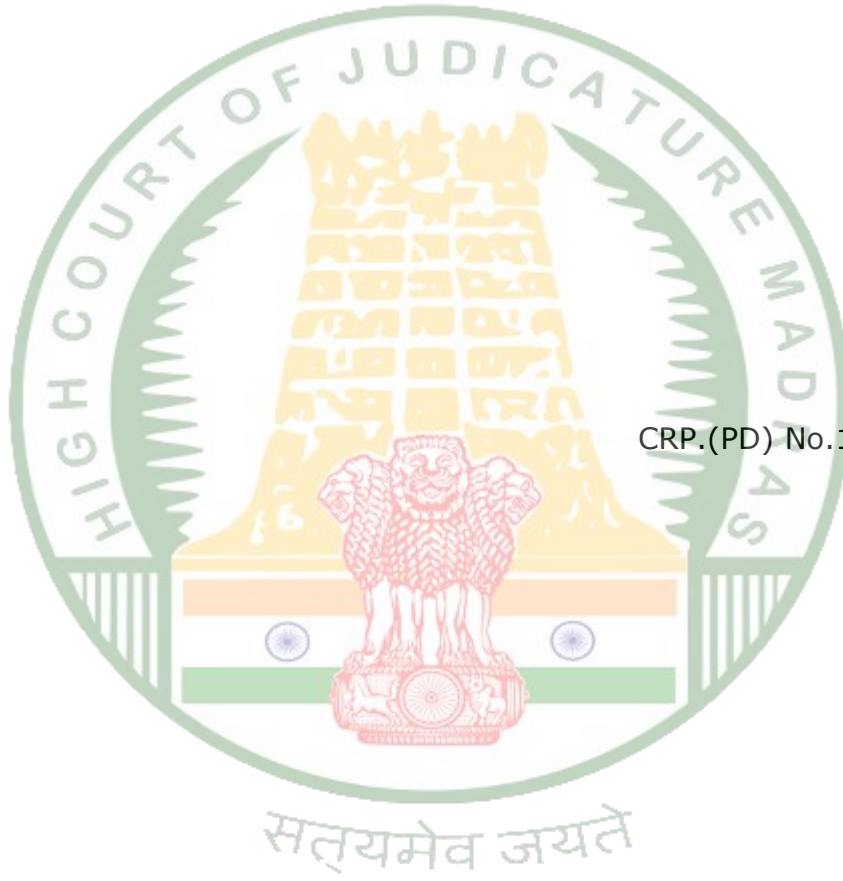
Speaking Order / Non-speaking Order

To:

- 1.The Principal District Judge
Coimbatore.
- 2.The Principal District Munsif
Coimbatore.



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