

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.1056 of 2015
and M.P.No.1 of 2015

Chandra

.. Petitioner

Vs.

C.Anandan

.. Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 08.01.2015 made in I.A.No.465 of 2014 in O.S.No.263 of 2012 on the file of the District Munsif Court, Sankari.

For Petitioner : Mr.R.Marudhachalamurthy

For Respondent : Mr.R.Neelakandan

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ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 08.01.2015 made in I.A.No.465 of 2014 in O.S.No.263 of 2012 on the file of the District Munsif Court, Sankari.

2. The petitioner is defendant and respondent is plaintiff in O.S.No.263 of 2012 on the file of the District Munsif Court, Sankari. The respondent filed the said suit for permanent injunction. The petitioner filed written statement on 06.03.2013 and is contesting the suit. The petitioner filed I.A.No.465 of 2014 on 01.04.2014 under Order VIII Rule 9 and Section 151 C.P.C. for permission to receive additional written statement.

3. According to the petitioner, when she changed her counsel and engaged the present counsel, she came to know that certain vital facts have not been mentioned in the written statement which was already filed. Therefore, that facts are necessary to prove her case and prayed for allowing the application to permit her to file the additional written statement.

4. The respondent filed counter affidavit and denied all the averments made by the petitioner. The respondent contended that the petitioner has taken contrary stand in the additional written statement inconsistent to the stand taken in the written statement already filed.

5. The learned Judge considering all the averments made in the affidavit, counter affidavit and materials on record, dismissed the application holding that the petitioner is taking inconsistent stand.

6. Against the said order of dismissal dated 08.01.2015 made in I.A.No.465 of 2014, the present Civil Revision Petition is filed by the petitioner/defendant.

7. The learned counsel for the petitioner contended that the application for permission to file additional written statement must be considered liberally. There is no prohibition under Order VIII Rule 9 C.P.C that defendant cannot take inconsistent stand in the additional written statement and whether he is taking inconsistent stand or not can be considered only at the time of trial. He further

contended that no prejudice would be caused to the respondent by allowing the application to receive additional written statement. In support of his contention, he relied on the following judgment of this Court reported in **2004 (5) CTC 644 (Sri Srinivasmurthy Mandiram, represented by its Executive Trustee D.Srinivasan v. Gnanasoundari)**:

"9. In this context, one should remember, Order VIII Rule 9 which gives ample power to the Court, to grant leave, for filing additional written statement, from any of the parties to the suit and it does not restrict prescribing, what is the defence that has to be taken or something like that. It says,

"No pleading subsequent to the written statement of a defendant other than by way of defence to a 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 for presenting the same."

It does not say that the subsequent pleading viz., additional written statement should be consistent with the original written statement. It also does not say, that the ground of defence, which had arisen, after the institution of the suit alone should be included in the additional written

statement. Therefore, generally, if any defence had not been taken in the original written statement, though it was available, that could be taken, by filing an additional written statement, and only to enable the defendant to raise that kind of plea also, Order 8, Rule 9 is intended. Therefore, when a defendant had raised a new plea, which is not covered in the original written statement or an inconsistent plea, against the original written statement, the same cannot be described or labeled as prejudicial defence or vexatious or scandalous, as understood under Order 6, rule 16, C.P.C. If the plaintiff/revision petitioner was aggrieved by the Court's order, in granting permission to file the additional written statement, the remedy would have been to challenge the same and not to file a petition under Order 6, Rule 16, C.P.C., to strike out the entire defence. Admittedly, in this case, the plaintiff/petitioner had not challenged the order of the trial Court, granting permission, to file additional written statement and in this view, in my considered opinion, Order 6, Rule 16, C.P.C., is not available. Assuming that it could be raised even after the additional written statement is received, then we have to see, under what circumstances, the averments in the written statement could be scraped or struck out or amended."

8. The learned counsel for the respondent contended that the petitioner is not entitled to take a contrary stand in the additional

written statement inconsistent to the stand taken in the written statement already filed. In the additional written statement, the petitioner is trying to introduce a new case. The learned Judge has dismissed the application after considering all the facts and prayed for the dismissal of the Civil Revision Petition.

9. Heard the learned counsel for the petitioner as well as the respondent and perused the materials available on record.

10. The petitioner has come out with the present application for permission to file additional written statement on the ground that after change of counsel, the present counsel found out certain vital facts which are not included in the written statement already filed. This ground is not a valid ground for permission to file additional written statement. Additional written statement can be filed only for clarification of the facts stated in the written statement already filed or to fortify the statement made in the written statement filed earlier. Further from the impugned order of the learned Judge, it is seen that originally, the petitioner has taken a stand that on the western side of her land, there is Government poramboke. Now she wants to introduce a new case that on the western side of her

land, there is one Palaniammal's land. By this, the petitioner is introducing a new case and her defence is entirely changed.

11. For the above reason, the Civil Revision Petition is dismissed as devoid of merits. No costs. Consequently, connected Miscellaneous Petition is closed.

07.02.2018

Index:Yes/No

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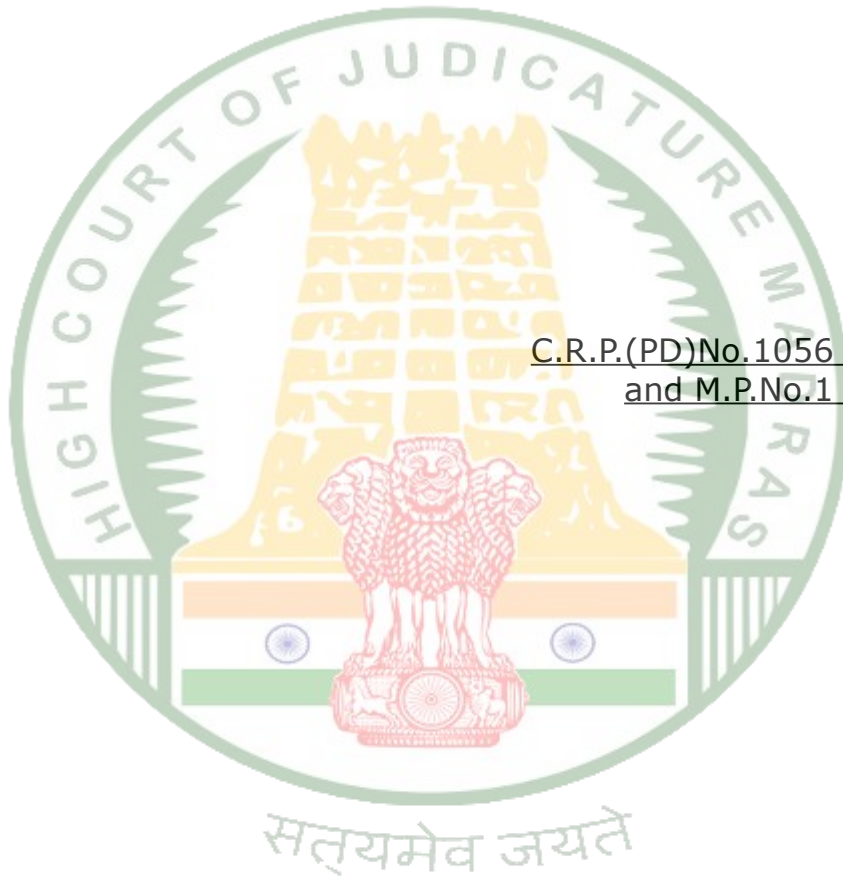
To
The District Munsif
Sankari.



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V.M.VELUMANI,J.

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