

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.1860 of 2015
& M.P.No.1 of 2015

1.Sundaramoorthy (Deceased)
2.S.Selvameenal
3.S.Senthilkumar
4.S.Arud Selvan
5.S.Kalaiyarassy

.. Petitioners

(petitioners 2 to 5 are brought on record as
LR's of the deceased first petitioner vide
order of Court dated 05.02.2018 made in
C.M.P.No.2159/2018 in C.R.P.No.1860/2015)

Vs.

Suguna

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 10.09.2014 made in I.A.No.116 of 2013 in O.S.No.71 of 2011 on the file of the District Munsif Court, Tiruvarur.

For Petitioners : Mr.N.Sathiyamoorthi

For Respondent : No appearance

ORDER

This Civil Revision Petition is filed against the fair and decretal order dated 10.09.2014 made in I.A.No.116 of 2013 in O.S.No.71 of 2011 on the file of the District Munsif Court, Tiruvarur.

2.The deceased first petitioner is plaintiff, petitioners 2 to 5 are the legal heirs of the deceased first petitioner and respondent is first defendant in O.S.No.71 of 2011 on the file of the District Munsif Court, Tiruvarur. The deceased first petitioner filed the said suit against the respondent and one Kalyanasundaram claiming a sum of Rs.30,000/- as damages. The respondent filed written statement on 29.11.2009 and she also filed additional written statement. The deceased first petitioner let in evidence and closed his side. When the suit was posted for evidence on behalf of the respondent and another defendant, the respondent herein filed I.A.No.116 of 2013 for permission to file additional written statement. According to the respondent, in additional written statement already filed, she has stated that her family members are cultivating the land, but failed to mention that as to how they came into possession. For the above reason, she sought permission of the Court to file second additional written statement.

3.The deceased first petitioner filed counter affidavit and opposed the said application and submitted that already the respondent filed written statement and additional written statement and she has not stated as to why she has not stated this fact in the written statement and additional written statement already filed. After commencement of trial, the deceased first petitioner had let in evidence and closed his side. When the suit was posted for evidence on the side of the respondent and another defendant, she has filed the present application only to drag on the proceedings.

4.The learned Judge considering the averments in the affidavit, counter affidavit and judgment relied on by the parties and scope of Order VIII Rule 9 of C.P.C, allowed the application.

5.Against the said order dated 10.09.2014 made in I.A.No.116 of 2013 in O.S.No.71 of 2011, the petitioners have come out with the present Civil Revision Petition.

6.Pending Civil Revision Petition, the first petitioner died and his legal heirs were brought on record as the petitioners 2 to 5 vide order in C.M.P.NO.2159 of 2018 in C.R.P.No.1860 of 2015.

7. Heard the learned counsel for the petitioners and perused the materials available on record. Though notice was served on the respondent and her name is printed in the cause list, there is no representation for her either in person or through counsel.

8. As per Order VIII Rule 9 of C.P.C, after completion of pleadings, no further pleading can be filed without leave of the Court, except reply statement in respect of the counter claim or set off claimed by the defendants in the written statement. The Court has power to permit the plaintiff to file reply statement and the defendants to file additional written statement. The defendants can be permitted to file additional written statement only to clarify the statement already made in the written statement and has no right to introduce new facts or new cause of action in the additional written statement. The leave to file additional written statement should not prejudice the plaintiff or permit to withdraw the admission already made in the written statement.

9. In the present case, from the impugned order, it is seen that the respondent has stated in the additional written statement already filed that her family members are cultivating the land. By way of second additional written statement, the respondent is

seeking to state as to how her family members came to be in possession of the property. The respondent has not given any reason for not mentioning this fact in the written statement or in additional written statement. By this additional written statement, the respondent is trying to introduce a new fact which she has not stated in the written statement already filed. In the present case, based on the pleadings, the issues were framed and trial commenced. The deceased first petitioner let in evidence and closed his side. When the suit was posted for evidence on behalf of the respondent and another defendant, the respondent has come out with the present application without giving any reason. This is a new case which the respondent is introducing or trying to introduce. The respondent, as a defendant is not entitled to introduce any new case by filing any additional written statement. The additional written statement can be filed only for clarification of the facts stated in the written statement or to fortify the statement in the written statement filed earlier. The respondent is not entitled to file additional written statement after additional written statement according to her whims and fancies. There must be finality of proceedings. The order granting leave to file additional written statement is discretionary power which has to be exercised judicially. The learned Judge without considering the above facts,

erroneously allowed the application. For the above reason, the order of the learned Judge is liable to be set aside and is hereby set aside.

10. In the result, this Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

13.02.2018

Index :: Yes
gsa

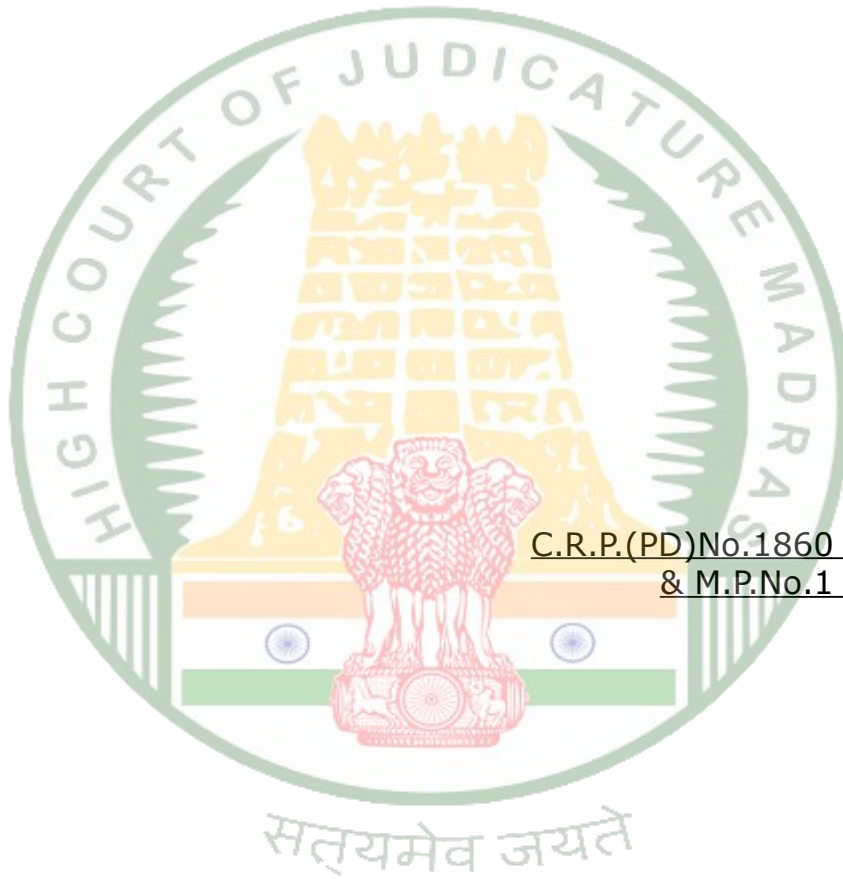
To
The District Munsif,
Tiruvavur.



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V.M.VELUMANI, J.

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C.R.P.(PD)No.1860 of 2015
& M.P.No.1 of 2015

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13.02.2018