



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.10.2018

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THE HONOURABLE MR. JUSTICE G.R.SWAMINATHAN

C.R.P(MD) (PD) .No.2179 of 2018

and

C.M.P(MD) .No.9717 of 2018

K.Sagayam

... Petitioner

vs.

1.P.B.Suresh Palraj

2.Carolin

... Respondents

PRAYER: Petition filed under Article 227 of the Constitution of India, to allow the revision petition and set aside the fair and decreetal order passed in I.A.No.65 of 2015 in I.A.No.176 of 2011 in O.S.No.131 of 2011 dated 14.06.2018 on the file of the District Munsif, Kodaikanal.

For Petitioner : Mr.C.S.Ravichandran
For Respondents : Mr.I.Sam Jegan

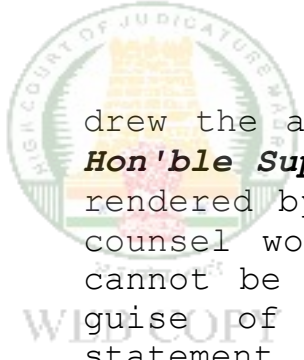
O R D E R

The defendant in O.S.No.131 of 2011 on the file of the District Munsif Court, Kodaikanal, is the revision petitioner herein. It is a suit for permanent injunction. In the said suit, the respondents filed I.A.No.176 of 2011 seeking temporary injunction. In the said interlocutory application, the revision petitioner earlier filed a counter on 17.02.2012. In the said counter, the revision petitioner herein did not controvert the averments made in paragraph Nos.4 and 5 of the affidavit filed in support of I.A.No.176 of 2011. Thereafter, the revision petitioner wanted to file additional counter affidavit, seeking leave of the Court below to accept and receive additional counter affidavit, he filed I.A.No.65 of 2015. The Court below by an order dated 14.06.2018 dismissed the said interlocutory application. Questioning the same, this Civil Revision Petition has been filed.

2.Heard the learned counsel on either side.

<https://hcservices.ecourts.gov.in/hcservices/>

3.The learned counsel appearing for the caveators/plaintiffs



drew the attention of this Court to the decision rendered by the **Hon'ble Supreme Court** reported in **2013 (3) LW 262** and the decision rendered by the **Madras High Court** in **2010(2) Lw 337**. The learned counsel would contend that the litigants, who had taken a stand cannot be allowed to wriggle out of their own admissions in the guise of filing of amendment or filing additional written statement. He contended that in his earlier counter affidavit the revision petitioner herein had conceded the assertion projected in paragraph Nos.4 and 5 of the affidavit filed in support of I.A.No.176 of 2011. In other words, after admitting that the respondents/plaintiffs are the owners of the property in question, the revision petitioner herein is now seeking to take a contrary stand, which cannot be allowed.

4.Though the submission made by the learned counsel appearing for the caveators/plaintiffs has some weight and force, I am of the view that the interest of the justice requires that the petitioner should be permitted to file his additional affidavit. This is for more than one reason. It is not in dispute that the revision petitioner had earlier filed a written statement and he is not taking a stand contrary to what has been stated in the written statement. The revision petitioner filed written statement only on 15.01.2015 and it has been taken on record. Additional counter affidavit filed by the revision petitioner is in consonance and tune with the stand taken in their written statement dated 15.01.2015. If the revision petitioner had originally filed written statement conceding the claim of the plaintiffs and later wants to file an additional written statement going back on an earlier admission, this Court cannot obviously permit the same. But in this case only one written statement has been filed and the present counter affidavit is in accord with the stand taken in the written statement.

5.If the reasoning of the Court below or the contention urged by the learned counsel appearing for the respondents is to be accepted, this Court will have to hold that where the petitioner/defendant has filed counter in his interlocutory application and is yet to file written statement, his written statement will have to be in accord with the stand taken in the counter affidavit. This Court cannot envisage such a consequence.

6.In this view of the matter, the order impugned in this Civil Revision Petition is set aside, this Civil Revision Petition is allowed.

7.However, the civil revision petitioner will have to be necessarily put on terms. The learned counsel for the revision petitioner undertakes to pay a sum of Rs.2,500/- (Rupees Two Thousand and Five Hundred only) as cost to the learned counsel appearing for the respondent in this civil revision petition. If



the cost amount is not paid within a period of two weeks from the date of receipt of a copy of this order, the order passed in this civil revision petition will stand recalled and the Civil Revision Petition itself will stand dismissed. Consequently, connected Miscellaneous Petition is closed.

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Sd/-
Assistant Registrar (AD-I)

/True Copy/

Sub Assistant Registrar (CS-IV)

To

1. The District Munsif, Kodaikanal.
2. The Record Keeper, VR Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+ 1 CC TO Mr.C.S.RAVICHANDRAN, ADVOCATE IN SR No. 88810

RMK

TE/RSK/SAR-4 : 31/10/2018 : 3P/5C

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