

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.07.2019

PRONOUNCED ON : 14.08.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P(PD) Nos.1553 & 1554 of 2015
and M.P.No.1 of 2015

1.Easwaran
2.Kumar
3.Palanisamy
4.Boopathi
5.Rakkiannan

.. Petitioners in both CRPs.

VS

1.Seerangamal
2.Rangasamy
3.Erusa Gounder

.. Respondents in both CRPs.

Prayer in CRP.PD.No.1553 of 2015: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 18.07.2014 passed in I.A.No.557 of 2014 in O.S.No.358 of 2013 on the file of Principal District Munsif Court, Bhavani, Erode District.

Prayer in CRP.PD.No.1553 of 2015: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 18.12.2014 passed in I.A.No.1998 of 2014 in O.S.No.358 of 2013 on the file of Principal District Munsif Court, Bhavani, Erode District.

For Petitioners : M/s.N.Premalatha for
(in both CRPs.) M/s.R.Nalliyappan

For Respondents : Mr.C.Kulanthaivel
(in both CRPs.)

COMMON ORDER

The petitioners are aggrieved by the impugned fair and decretal order dated 18.07.2014 in I.A.No.557 of 2014 and order dated 13.10.2014 in I.A.No.1998 of 2014 passed by the Principal District Munsif Court, Bhavani. Both the applications were filed by the petitioners in O.S.No.358 of 2013 and were dismissed by the said Court.

2. The petitioners are the defendants in the above suit. After the respondent/plaintiff's side evidence was completed, the petitioners filed I.A.No.557 of 2015 to appoint an Advocate Commissioner to note down the physical features of the suit property and to file a report. I.A.No.557 of 2015 for appointment of an Advocate Commissioner was dismissed on the ground that the issue can be decided at the time of trial and therefore, there was no necessity for appointment of an Advocate Commissioner vide order dated 18.07.2014.

3. The petitioners had later filed I.A.No.1998 of 2014 to file additional written statement. I.A.No.1998 of 2015 under Order 8 Rule 9 of C.P.C. was also dismissed on 13.10.2014 on the ground that after recording of evidence of the plaintiff, application to accept additional written statement can not be permitted.

4. It is stated that the petitioners had earlier filed application to recall and reopen the evidence and the same was allowed and the case was posted for cross examination of respondents-plaintiffs, the petitioners filed these two applications. However, there are no document to substantiate the same.

5. It was stated that dismissal of these two applications are not proper and was liable to be interfered.

6. Per contra, the learned counsel for the respondents/plaintiffs submits that both the applications filed by the petitioner in the suit were after the trial had commenced and the evidence was closed. It was stated that the petitioners cannot alter the course of litigation by seeking to file additional written statement and introduce a relief for declaration based on easementary

rights to path way.

7. In this connection, learned counsel for the respondents relied upon the decision of this court reported in ***H.Ramachandra Rao vs. A.Mohideen***, 2000-1 L.W. 420, wherein in para 7 it was observed as under :

"7. ... When the affidavit does not disclose any reason for not taking this defence earlier court was justified in rejecting the application. It is also settled law that while granting leave, Court will have to consider the stage of the suit, delay on the part of party on seeking leave and how far the opposite party will be put to hardship if leave is granted. In this case, entire evidence of plaintiff is over. If fresh pleadings are allowed to take place, plaintiff will be put to hardship and entire case will have to be reopened. First written statement was filed in the year 1992 and it was seven years after leave is sought for, to file additional written statement. Why petitioner waited for these seven years for filing the application is now here stated in the affidavit.

8. Petitioner cannot contend or insist that Court must receive additional pleadings as of right. Permission has to be obtained under Order 8, Rule 9 of Code of Civil Procedure. Under what circumstances leave is to be granted and how the discretion is to be exercised would depend on the facts and circumstances of each case. In all such cases, party who seeks leave has to explain as to why this contention was not raised in the earlier pleadings. While exercising discretion, the Court will consider the conduct of the party, stage of the litigation, delay that has occasioned, how far the opposite party will be put to hardship, etc."

8. He also relied on the decision of the Court in ***Poongavanam Ammal vs. Navaneetham Ammal***, 2000-1-L.W.821, it was held as under:

"It is true that defendant may be in a position to take inconsistent stand. But that is not the question that has to be decided in this case. Under Order 8 Rule 9 of Code of Civil Procedure, no pleadings after written statement filed can be received except with the leave of the Court. Naturally , when leave is sought for, petitioner will have to explain why the present contention was not raised on the earlier occasion. Pleadings cannot be filed piecemeal. Even if inconsistent stand could be taken that does not follow that defendant can file written statement at any time as he chooses and even without showing sufficient cause." But the above decision is not applicable to the facts of the present case. Because in the above decision, the first defendant is an advocate, after long time he put forth new case, so this Court has held that he is not entitled to file additional written statement. "

9. I have considered the arguments advanced by the counsel for the petitioners and the respective counsels for the respondents in the respective Civil Revision Petition.

10. In the affidavit filed in support of I.A.No.1998 of 2015, the petitioners stated that he found certain documents which establishes his right to pathway and easementary rights. However, the petitioners have not given any details of the document based on which, the relief was claimed. However, in the written statement, it was stated that the petitioners had stated that he had no documents.

11. The petitioners later prayed for counter claim for declaration to that effect. The Court after considering the argument, has dismissed these applications on the ground that the application has been filed after closing of evidence and therefore, the application cannot be entertained.

12. The only question to be considered by this court while disposing application under order 8 Rule 9 of CPC is to see whether the petitioners who are the defendants in the above suit has given sufficient explanation as to why the contentions were not raised earlier and how far by allowing such application for respondents would be prejudiced.

13. Before dealing further, it may be useful to refer some of the decisions rendered by the Hon'ble Supreme Court.

14. In **Baldev Singh v. Manohar Singh**, (2006) 6 SCC 498, the Court held that the defendant can take inconsistent or alternative pleas in the written statement although the same may not be permissible in the case of plaint following the law laid down in **Modi Spg. and Wvg. Mills Co. Ltd.v. Ladha Ram & Co.**[(1976) 4 SCC 320].

15. In **B.K. Narayana Pillai v. Parameswaran Pillai** [(2000) 1 SCC 712], it was held that though the defendant has a right to take alternative pleas in defence by way of amendment, it would be subject to qualification that: (i) proposed amendment should not result in injustice to the other side; (ii) any admission made in favour of the plaintiff should not be withdrawn; and (iii) inconsistent and contradictory allegations which negate admitted facts should not be raised.

16. In **S.Malla Reddy & Others Vs Future Builders Co-operative Housing Society & others**, 2013(3) CTC 343 reference was made to the decision of the Hon'ble Supreme Court in **Heeralal versus Kalyan Mal** 1998 (1) SCC 278. The court held that a written statement containing an admission cannot be allowed to be withdrawn as such withdrawal would amount to totally discretionary case of the plaintiff and would cause irretrievable prejudice. In the said decision, the decision of the Hon'ble Supreme Court in **B.K. Narayana Pillai v. Parameswaran Pillai** [(2000) 1 SCC 712] was also referred.

17. In few other decisions it has been held that concession or admission given in the written statement cannot be resiled either by filing amendment to written statement or by filing the additional written statement. As long as there is no prejudice to the to the plaintiff, application

for amending the written statement or filing of additional written statement should be allowed liberal.

18. The case of the petitioners are that the application to reopen the evidence and to recall the witness was allowed and when the case was posted for cross examination of the respondents/ plaintiffs, these applications were filed. It is submitted that the application has not been filed belatedly even though the trial had commenced. Before dealing proceedings, it may be useful to refer some of the decisions rendered by the Hon'ble Supreme Court.

19. It is noticed that the suit is of year 2013. These applications were filed by the petitioners in the year 2014 within 3 months and 8 months respectively of filing written statement during March 2014. The only difficulty that is noticed is that the affidavit filed by the petitioners in support of these applications are bereft of detail. However, in additional written statement filed by the petitioners, the petitioners have given details.

20. While considering the application for leave to file additional Written Submission under Order 8 Rule 9 of CPC is concerned, the court has to see additional written statements are not filed belatedly.

21. There is no time lag in filing of these applications by the petitioners though the trial had commenced and the proceedings moved at a faster pace.

22. No prejudice will be caused to the respondents as cross examination of the plaintiffs' witness is not yet over.

23. Petitioners have made out a case for interference in this Civil Revision Petition in CRP.No.1554 of 2014. I am therefore inclined to allow the civil revision petition on terms subject to payment of cost to the respondents inasmuch as the respondents have been subjected to inconvenience charges in prosecuting the above suit for a longer time. As far as C.R.P.No.1553 of 2013 is concerned, I do not find any reasons to interfere with the order.

24. In fine,

i) CRP.PD.No.1553 of 2015 is dismissed.

ii) CRP.PD.No.1554 of 2015 is allowed subject to payment of cost of Rs.7,500/- to the respondents/plaintiffs.

iii) The impugned order passed by the learned Principal District Munsif, Bhavani in I.A.No.1998 of 2014 dated 18.12.2014 is hereby set aside.

iv) The amount shall be deposited by the petitioners-defendants within a period of four weeks from the date of receipt of a copy of this order to the credit of O.S.No.358 of 2013 on the file of the Principal District Munsif, Bhavani.

v) On such deposit, the respondents are directed to withdraw the aforesaid amount.

vi). On such compliance, the learned Principal District Munsif, Bhavani is directed to frame additional issues if required on the strength of additional statement filed by the petitioners and proceed with the trial after giving an opportunity to the respondents to file a reply statement if desired by the respondents.

vii) The learned Principal District Munsif, Bhavani is also directed to pass a judgment and decree within a period of nine months from date of receipt of this order. Consequently, connected miscellaneous petition is closed.

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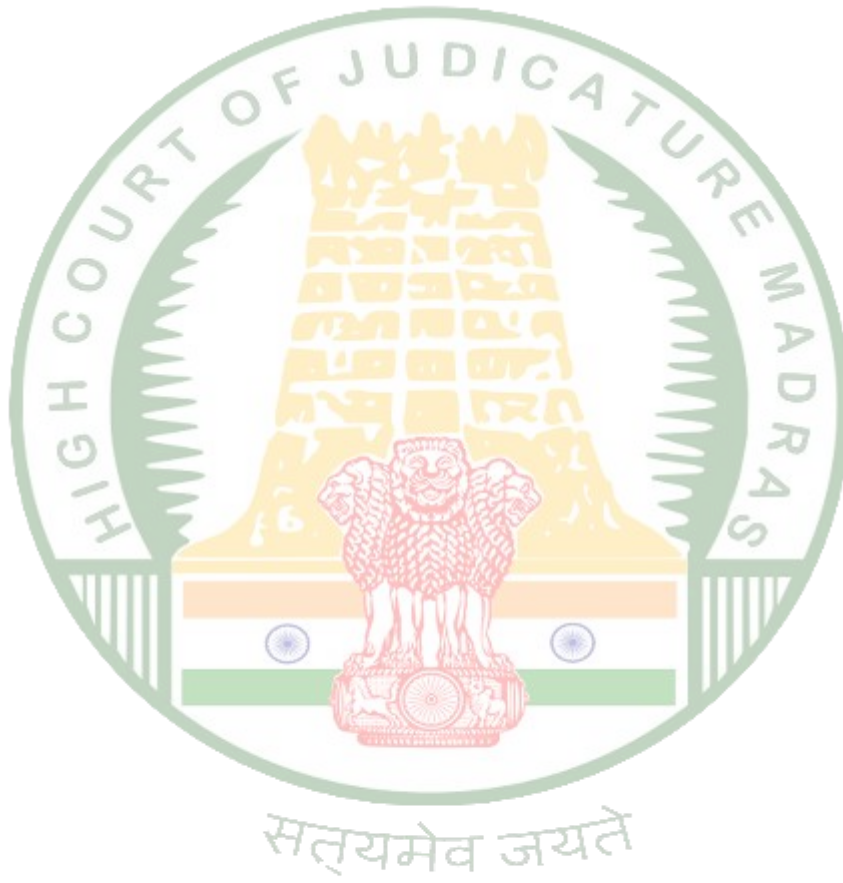
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Index :Yes/No

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Speaking : Non Speaking Order



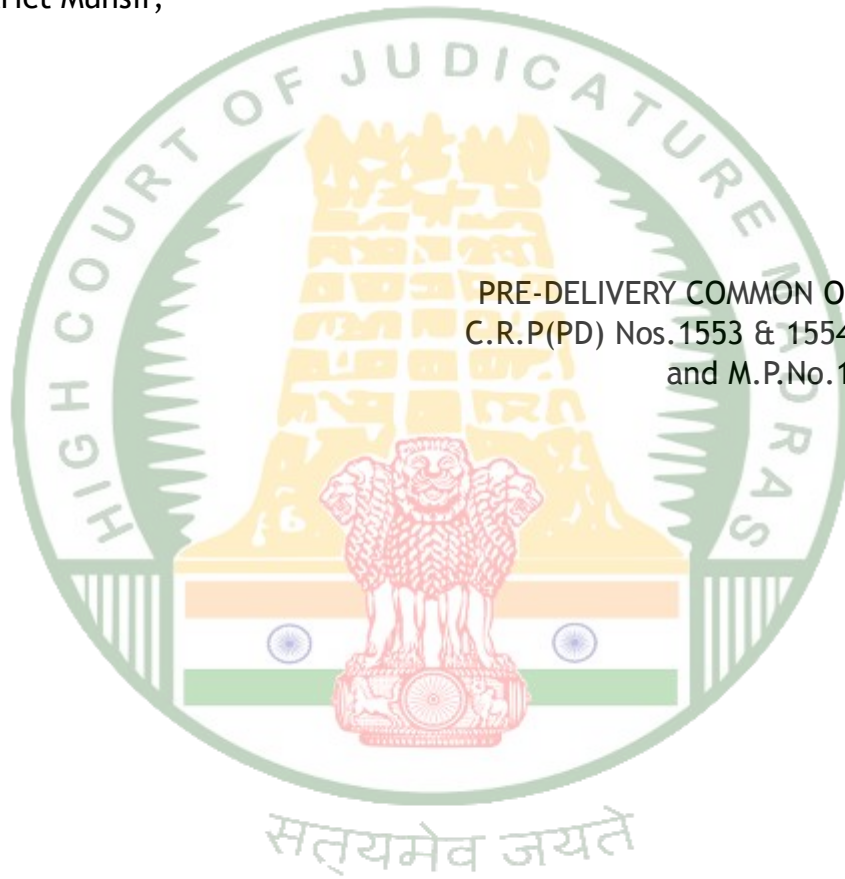
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C.SARAVANAN,J

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To

Principal District Munsif,
Bhavani



PRE-DELIVERY COMMON ORDER IN
C.R.P(PD) Nos.1553 & 1554 of 2015
and M.P.No.1 of 2015

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