

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.11.2019

CORAM :

The HON'BLE MR.JUSTICE M.DURAI SWAMY

C.R.P.No.1919 of 2015
and M.P.No.1 of 2015

Nallappan ... Petitioner/Petitioner/Appellant

Vs.

1.Raju
2.Mani
3.Palanisamy
4.Ayyanthurai
5.Boopathy
6.Nallappan
7.Thangavel
8.Chinnamuthu

... Respondents/Respondents/Respondents
(R6 to R8 remained exparte in I.A.No.13 of 2014 hence, notice may be dispensed with)

Petition filed under Section 115 of the Code of Civil Procedure against the fair and decreetal order dated 17.10.2014 dismissing the application in I.A.No.13 of 2014 in A.S.No.33 of 2012 on the file of the Subordinate Court, Sankari.

For Petitioner : Mr.P.Jagadeesan

O R D E R

Challenging the fair and final order passed in I.A.No.13 of 2014 in A.S.No.33 of 2012 on the file of the Subordinate Court, Sankari, the 1st defendant in O.S.No.118 of 2005 on the file of the District Munsif Court, Sankari has filed the above Civil Revision Petition.

2.The respondents 1 to 5/plaintiffs filed the suit in O.S.No.118 of 2005 for permanent injunction. After contest, the trial Court decreed the suit on 18.09.2012. Aggrieved over the same, the 1st defendant preferred an appeal in A.S.No.33 of 2012 before the Sub Court, Sankari. In the said appeal, the 1st defendant took out an application in I.A.No.13 of 2014 under Order 8 Rule 9 of the Code of Civil Procedure to permit him to file additional written statement. The application filed by the 1st defendant was opposed by the plaintiffs stating that the application was filed at a belated stage. The Lower

Appellate Court, taking into consideration the case of both parties, dismissed the application finding that the application was filed at a belated stage and that only to drag on the matter, the 1st defendant has filed the application.

3. When the suit was filed in the year 2005 and the defendants have filed their written statement and when the suit was decreed in the year 2012, the 1st defendant chose to file an application to permit him to file additional written statement only in the year 2014. With the available pleadings, the trial Court had framed the issues and the parties also let in evidence based on the available pleadings. When the trial Court had decreed the suit and the 1st defendant had filed an appeal challenging the judgment and decree passed by the trial Court, the 1st defendant cannot be permitted to file additional written statement at this point of time. If the 1st defendant is allowed to file the additional written statement, it would only result in filling up the lacunae. The 1st defendant should have filed the application at the earliest point of time and not before the Lower Appellate Court during the pendency of the First Appeal. The Lower Appellate Court has rightly dismissed the application.

4. In these circumstances, I do not find any ground to interfere with the order passed by the Lower Appellate Court. The Civil Revision Petition is devoid of merits and the same is liable to be dismissed. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CJ conf)

//True Copy//

Sub Assistant Registrar

va

To

The Subordinate Judge, Sankari.

+1cc to Mr. P. Jagadeesan, Advocate SR.98107

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and M.P.No.1 of 2015

SSD (CO)
CB (19/12/2019)