

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE P.T. ASHA

C.R.P. PD No.1671 of 2019

and

CMP No.10787 of 2019

Shanmuga sundaram

.. Petitioner

Vs.

Saraswathi (died)

1.Nagaraj

2.D.Jagadhambal

3.D.Sampoornam

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 13.03.2019 made in I.A.No.4 of 2019 in O.S.No.457 of 2009 on the file of the learned Principal District Munsif Court, Erode.

For Petitioner : Mr.N.Manokaran

ORDER

The above Civil Revision Petition is filed challenging the dismissal of the application filed by the 3rd defendant for receiving the second additional written statement in I.A. No.4 of 2019 in O.S. No.457 of 2009 on the file of the Principal District Munsif Court, Erode.

2. The revision petitioner / third defendant has adopted the detailed written statement filed by the second defendant as early as on 28.03.2010, wherein the claim of the plaintiff's to the property had been questioned. Thereafter, it is seen that an additional written statement has been filed by the 3rd defendant on 29.06.2012, wherein, the earlier defence was reiterated and the only new defence that was raised has been narrated in paragraph 9 with reference to the settlement deed, dated 07.01.2019 executed by the first defendant in favour of the second defendant. Thereafter when the matter was pending for trial, the present application is filed for filing the II additional written statement and the only reason given for seeking leave was that the revision petitioner had failed to give important points due to oversight, which in my opinion is a very lame reason. A perusal of the additional written statement which is also filed does not show any serious defence that has been raised and on the contrary appear to be a repetition of the earlier one.

3. The learned counsel has relied upon the Judgment reported

in **2009 15 SCC 528 (Olympic Industries versus Mulla Hussainy Bhai Mulla Akberally and others)**, more particularly, paragraphs 14, 15, and 18 :

14. In our view, this is also not a ground for which the High Court could interfere with the concurrent orders of the Rent Control Tribunal and reject the application for permission to file additional counter-statement. In our view, even by filing an amendment or additional counter -statement, it is open to the appellant to add a new ground of defence or substituting or altering the defence or even taking inconsistent pleas in the counter-statement as long as the pleadings do not result in causing grave injustice and irretrievable prejudice to the plaintiff or displacing him completely. (See Usha Balashaheb Swami V. Kiran Appaso Swami, SCC p. 612, para 27) Therefore, we are unable to agree with the High Court on this ground as well.

15. It is also well settled that the courts should be more generous in allowing the amendment of the counter-statement of the defendant than in the case of plaint. The High Court in its impugned order has also observed that in order to file an additional counter-statement, it would be open to the defendant to take inconsistent plea. The prayer for acceptance of the

additional counter-statement was rejected by the High Court on the ground that while allowing such additional counter-statement to be accepted, it has to be seen whether it was expedient with reference to the circumstances of the case to permit such a plea being put forward at that stage.

18. It is also well settled that while allowing the additional counter-statement or refusing to accept the same, the court should only see that if such additional counter-statement is not accepted, the real controversy between the parties could not be decided. As noted hereinafter, by filing an additional counter-statement in the present case, in our view, would not cause injustice or prejudice to the respondents but that would help the court to decide the real controversy between the parties. In our view, the High Court was, therefore, not justified in rejecting the application for permission to file additional counter-statement as no prejudice could be caused to the respondent which would otherwise be compensated in terms of costs.

4. The plaintiff resisted the above application by contending that

the petitioner has already cross examined the plaintiff in full and thereafter,

once they changed their counsel, an application was made to re-open

and re-call PW1 for cross examination. That application was allowed and

while PW1 was in the witness box, this application has been filed and the only aim on the part of the 3rd defendant / revision petitioner is to protract the proceedings. The learned Principal District Munsif Judge, Erode, has dismissed the application stating that sufficient reasons have not been shown. Challenging the same, the revision petitioner is before this Court.

5. As already submitted Mr. N. Manokaran, drew the attention of this Court to the judgment stated supra. Even in the said judgment, it has been clearly stated that while allowing the additional written statement or refusing to accept the same, the Court has to only see, that if the real controversy between the parties could not be decided, then the written statement is ought not to have accepted. A perusal of the additional written statement that has been filed does not indicate any such thing and, it only relates to the omission on the part of the plaintiff to include the house property and also the non joinder of necessary parties. Such particulars do not require to be set out by way of an additional written statement and all the information are very much available in the original

written statement as well as the first additional written statement that have been already filed. Filing of the second additional written statement without there being any additional / sufficient cause as stated in the judgment cited above no case is made out. Hence, I do not find any infirmity in the order passed by the learned Principal District Munsif, Erode in I.A.No.4 of 2019 in O.S.No.457 of 2009.

6. In the result, the Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

30.04.2019

Internet: Yes/No

Index: Yes/No

Speaking order/Non-speaking order

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To

The Principal District Munsif Court,
Erode.

P.T. Asha, J.

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