

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE P.T. ASHA

C.R.P. PD No.804 of 2018

and

CMP No.4453 of 2018

A. Mahendran

.. Petitioner

Vs.

1. Arjunan

2. R. Pushpa

3. R. Kumar

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 21.12.2017 in I.A. No.192 of 2017 in O.S. No.241 of 2013 on teh file of the Principal District Judge at Salem.

For Petitioner : Mr.V. Sekar

For Respondents : Ms.Zeenath Begum for R1

Not ready in notice - Reg. RR2 and 3

ORDER

The above Civil Revision Petition is filed challenging the order in I.A.

No.192 of 2017 in O.S No.241 of 2013, passed by the learned Principal District

Judge, Salem, rejecting the application filed by the revision petitioner / 1st

defendant for receiving the additional written statement.

2. The facts in brief which are necessary for disposing of the above Civil Revision Peititon are as follows :

3. The first respondent has filed the suit in O.S. No.241 of 2013 before the learned Principal District Judge, Salem for partition and separate possession of his half share in the suit property. The defence was that the plaintiff and the first defendant were the children through the 3rd and 4th wife respectively of the deceased Ananda Gounder and besides them, Ananda Gounder had two other wives, whose children were not impleaded in the suit. It is also the case that Ananda Gounder during his life time had allotted the properties to the children belonging to each wife and the plaintiff has also been so allotted and now the plaintiff is seeking partition with reference to properties, which have been allotted to the other branches.

4. When trial has commenced and PW1 was in the box, the revision petitioner / first defendant came forward with the present application to file an additional written statement, where, the first defendant sought to elaborate

further on the original written statement by submitting as to how each property had been dealt with. In the affidavit that is filed in support of the petition seeking leave to file the additional written statement, the only reason that is put forward by the revision petitioner / defendant is as follows :-

Though in my written statement, I have stated about the disposal of the properties given to the respondent / plaintiff. I am advised to file an additional written statement with details of the allotment and the alienation made by the respondent / plaintiff. Hence this petition.

5. The first respondent / plaintiff had resisted the above application, inter alia, contending that the application is highly belated and made only with an intent of dragging on the proceedings and causing harassment to the first respondent / plaintiff and the same is being taken only at a time when the cross examination was on going. Therefore, the first respondent sought for dismissal of the said application.

6. The learned Principal District Judge, Salem, after hearing both parties, has proceeded to dismiss the said application on the ground that the defence of the petitioner was that the said Ananda Gounder died testate and therefore, the issue to be decided is whether Ananda Gounder died intestate or testate and whether the Will dated 02.06.1983 is true or not. Therefore, the trial

Court was of the view that an additional written statement is not necessary to dispose of the case.

7. Challenging the same, the revision petitioner is before this Court.

8. Mr.V. Sekar, learned counsel appearing on behalf of the petitioner would contend that the Court below has failed to appreciate that the additional written statement was not in any manner introducing a new case and therefore, the Court ought to have adopted a liberal approach. In support of his arguments, he had relied upon the Judgement reported in **CDJ 2016 MHC 4808 (Sundarajan versus Dr. K. Chandrasekaran and others)** and would rely upon paragraph 9 of the said judgment, which reads thus :

9. *It has also been held in Devendran and Ors vs. P.V. Palani, 2016 (4) CTC 750 by this Court after referring to the judgments of the Supreme Court on the issue regarding the interpretation of Order VIII Rule 9 of CPC that a liberal approach is to be adopted in cases of amendment of the defence plea namely, by way of additional written statement and delay alone shall not be the reason to refuse permission to file additional written statement. This judgment has been relied upon by Mr.R. Bharath Kumar and accordingly, it has been submitted by him that the Trial Court has adopted a narrow and pedantic approach while interpreting Order VIII Rule 9 and has in fact, misinterpreted the scope of the said provision while passing the impugned order rejecting the*

application filed by the petitioner. However, the learned Counsel for the Respondent relied upon the judgment of this Court in N.Srinivasan vs. Muthammal, 1998 (2) CTC 94 wherein this Court has held that the Applicant while filing an application under Order VIII Rule 9 cannot raise inconsistent or alternative plea depriving the plaintiff the benefit of statutory presumption and also, that an application which is belated can also not be entertained. As stated earlier, the purpose of Order VIII Rule 9 providing for filing of additional written statement with the leave of the Court is two-fold. First, it is to ensure that a license is not given to the defendant in a Suit to perpetually keep filing additional documents so as to prolong the Suit and cause prejudice to the plaintiff by deliberately delaying the Suit from reaching its logical end. Second, it is to ensure that the Court is provided the ultimate discretion to permit the filing of written statement or additional written statement from any of the parties and fix a time limit of not more than thirty days for presenting the same. Here, the Court is permitted to exercise its discretion to allow the filing of additional pleadings but however, the provision also clearly indicates that the Court shall not grant more than thirty days for presenting the additional pleadings. Hence, the issue of minimising delay is self contained in the provision itself. However, giving the liberty to the Court of filing the additional written statement at any juncture where the Court feels it is just and necessary.

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9. Per contra Ms.Zeenath Begum, learned counsel appearing for the first respondent argued that the application is highly belated and is an attempt to fillup the lacuna, as the same has been filed only after the evidence of PW1.

She would contend that there is no necessity to allow the application, as the defendants could still prove the case.

10. Heard both counsels and perused the records.

11. As rightly pointed out by the learned counsel for the first defendant / revision petitioner, in the original written statement, the revision petitioner has simpliciter stated that the father had lot of properties and in which, he had bequeathed certain properties in favour of the plaintiff and also allotted properties to his other legal heirs and also certain properties had been bequeathed to the revision petitioner / 1st defendant. The revision petitioner has not in detail traced out the title of the properties and how the same cannot be allotted exclusively on the plaintiff. Further, the suit is at the stage of the evidence of PW1 and if the additional written statement is received, the same would not cause much prejudice to the plaintiff / 1st respondent. This Court, taking note of the judgment of this Court which advises liberal approach being adopted in granting leave to file an additional written statement and considering the overall circumstances of the case, deems it fit to set aside the order in

I.A.No.192 of 2017 in O.S No.241 of 2013, passed by the learned Principal District Judge, Salem.

12. In the result, the Civil Revision Petition is allowed. The additional written statement filed by the first defendant is directed to be received by the trial Court. The trial court is further directed to frame additional issues, if any and then proceed with the trial after affording reasonable opportunity to both sides. No costs. Consequently, the connected miscellaneous petition is closed.

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Internet: Yes/No

Index: Yes/No

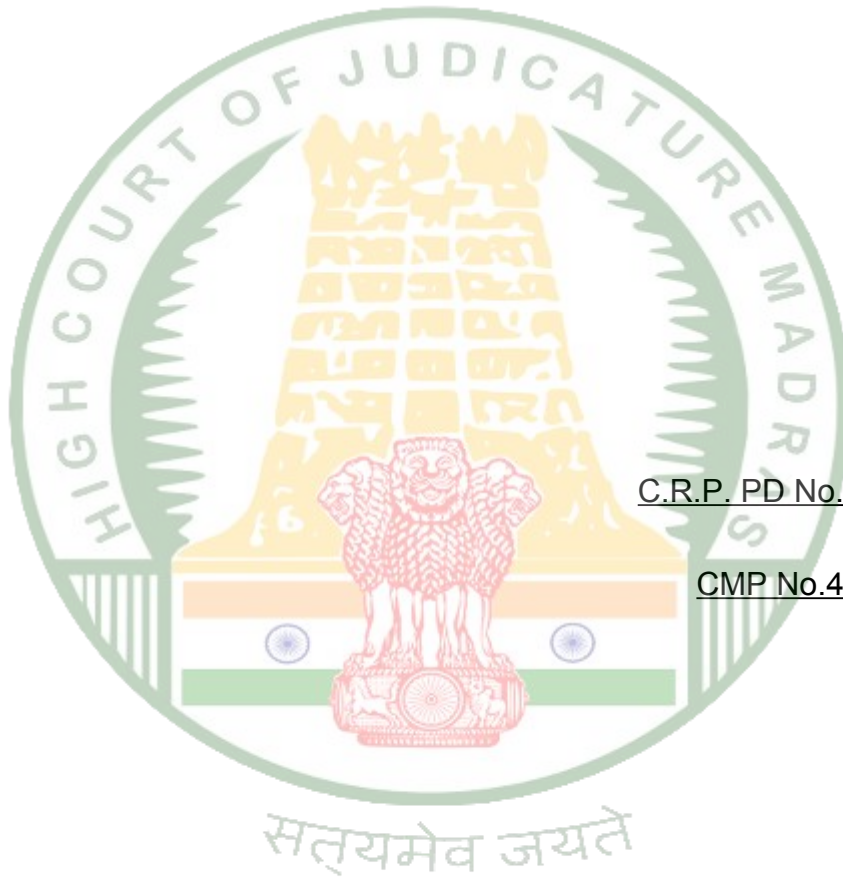
Speaking order/Non-speaking order
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To
The Principal District Judge at Salem.

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P.T. Asha, J.

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