

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 18.10.2019

ORDER PRONOUNCED ON : 31.10.2019

CORAM:

**THE HON'BLE MR. JUSTICE R.PONGIAPPAN**

Civil Revision Petition (PD) No.1061 of 2014  
and  
M.P.No.1 of 2014

1. Murugesan
2. Mayandi
3. Shanmugam

Petitioners

Vs

1. Naryanan
2. Perumal
3. Vadamalai
4. Durai
5. Hari Lakshmi
6. Mani
7. Veerabathiran
8. Alamelu

Respondents

**PRAYER:** Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 21.10.2013 passed in I.A.No.1630 of 2012 in O.S.No.330 of 2006, on the file of District Munsif Court, Chengalpattu, Kanchipuram.

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For Petitioner : Mr.C.Prabakaran

For Respondents : No appearance

## **ORDER**

The Civil Revision Petition has been preferred against the fair and decreetal order dated 21.10.2013 passed in I.A.No.1630 of 2012 in O.S.No.330 of 2006, on the file of District Munsif Court, Chengalpattu, Kanchipuram.

2. The plaintiffs in O.S.No.330 of 2006 before the District Munsif Court, Chengalpattu are the petitioners herein. Before the said Court, they have filed the suit as against the respondents herein seeking the relief of permanent injunction restraining them, their men, agents and servants from alienating or encumbering any of the suit properties to any person. During the course of the trial proceedings, the 1<sup>st</sup> defendant Narayanan in the said Suit has filed I.A.No.1630 of 2012 and pleaded to accord sanction, permitting him to file additional written statement. The learned District Munsif, Chengalpat by an order dated 21.10.2013 has allowed the application filed by the first respondent and received the additional written statement. Aggrieved over the said findings, the petitioners are before this Court with the present Civil Revision Petition.

3. The details of averments made in the affidavit filed by the first respondent in support of the petition filed under Order VIII Rule 9 of C.P.C are as follows:-

3.1. In the above referred Suit, the plaintiffs have filed first proof affidavit and marked 11 documents as Exs.A.1 to 11. Before completing the cross examination of PW 1, the plaintiffs had filed second proof affidavit and also filed an application seeking permission to file additional documents and the same was allowed in favour of them. Accordingly, the documents were marked as Exs.A12 to A16. Those documents are in toto bring out a new case shadowing earlier pleadings. In fact, Exs.A13 & A14 are brought into existence by introducing new names and through the names introduced, title of the suit property are traced. Further, the said documents were obtained by way of filing the petition invoking Section 13(3) of the Registration of Birth and Death Act, 1969. As these two documents are created subsequent to the suit so as to coincide with the name found in Ex.A.12. The names found in Ex.A.12 are the ancestors of the defendants and not the plaintiffs. The name Ombaduran found in Ex.A12 was the son of Kulundhi. Further Ombaduran had another brother by name Ponnann and as such Ponnann's father name was also Kulundhi. To prove this fact of relationship, first respondent/1<sup>st</sup> defendant had filed pattas, by filing a separate petition under Order VIII Rule 1 A(3) of Civil Procedure Code. Since the plaintiffs had changed their stand and created a new case by marking additional documents as Exs.A.12 to A16, he was forced to file an additional written statement, especially for answering Ex.A.12 to A16. According to the first respondent, additional written statement is in consequence of documents subsequently filed as Exs.A12 to A16, that too, after first proof affidavit was filed.

4. Resisting the claim made by the first respondent, the petitioners in the Civil Revision Petition have filed a counter affidavit and states as follows:-

4.1. It is an admitted fact that after filing the first proof affidavit, the plaintiffs had filed an application to mark additional documents along with second proof affidavit and it is true that the said application has been allowed and those documents have been marked as Exs.A12 to A16. It is not correct to say that those documents are marked in order to bring out a new case shadowing earlier pleadings including the source of tracing the legal heirs of Kanni. The documents additionally produced are genuine and hence there was no specific objection at the time of marking those documents as exhibits. The documents Exs.A13 and A14 are obtained from the Court of law and it cannot be said that the same was false and baseless. If really the petitioner/first respondent are prejudiced, he would have preferred Civil Revision Petition earlier, but he did not take any steps and simply attempting to file additional written statement. The averments in the additional written statement are all not correlated and inconsistent with each other and hence the petition has to be dismissed in limini.

5. Based on the above pleadings, the learned District Munsif, Chengalpat considered the issue infavour of the first respondent and has allowed the same.

6. Today when the petition came up for hearing, the learned counsel for the petitioners alone present and completed their side arguments. There is no representation on the side of the respondents. Since the Civil Revision Petition is pending from the year of 2014, the respondent side arguments has been suo moto closed.

7. The learned counsel appearing for the petitioner would contend that by way of filing additional written statement, the first respondent attempted to introduce a new case. But the learned District Munsif, Chengalpat without considering the said aspect allowed the application filed by the first respondent, which is erroneous in law.

8. On going through the impugned order dated 21.10.2013, the learned District Munsif has observed that only for answering Exs.A12 to A16, the first respondent has filed an additional written statement, which is necessary for arriving at justice in this case.

9. On considering the submission made by the learned counsel appearing for the petitioner, it is not denied that after filing the 2<sup>nd</sup> proof affidavit through PW 1 and by way of the said affidavit, they have marked five documents as Exs.A12 to A16. Though the said documents are marked before the trial Court, without any objection, it is necessary to see that Ex.A.13 is the Certificate issued by the competent Court, in

respect to the death of Kanni @ Kanniammal. Though the details of documents are not produced before this Court, it is crystal clear that the counter affidavit has been filed by the plaintiffs, after marking the new documents as Exs.A12 to A16. More particularly, the first respondent has filed an application to receive the additional written statement, before completing the defendants side evidence,. In fact, in the written statement filed in earlier occasion, the first defendant has not stated anything about the death of Kanni @ Kanniammal.

10. It is the case of the plaintiff that the plaintiffs' ancestors namely Kanni and her legal heirs acquired right and title clubbed with possession to the suit property. In fact, at the time of filing the suit, no relevant document is produced by the petitioners/plaintiffs, to prove the said averments. On the other hand, in the written statement filed by the first defendant, the said fact was denied. Only in the said circumstances, after getting the Death Certificate of Kanni, the plaintiffs have filed an application before the trial Court and exhibited the said document, to prove the title and possession. So, it is the duty of the defendant to deny the genuineness of the said document at the time of marking those documents. In otherwise, through the additional written statement, the first defendant not attempted to introduce new pleadings. It is the duty of the plaintiffs to produce substantial documents proving their title to the suit property. In this case, in the impugned order, the learned District Munsif has categorically mentioned that the contention of defendants is

that only for the purpose of answering the subsequent pleadings raised by the plaintiffs and denying the plaintiffs case, defendants have filed the additional written statement. In my considered view, the Court can grant permission to the defendants to file additional written statement by fixing maximum days for presenting the same.

11. Taking into consideration of all the above facts and circumstances of the case, I am of the opinion that the impugned order passed by the learned District Munsif is not having any material irregularity. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous petition is closed.

**31.10.2019**

**To**

The District Munsif Court, Chengalpattu, Kanchipuram.

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**R.PONGIAPPAN, J.,**

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**Pre-delivery order in Civil Revision Petition(PD) No.1061 of 2014**  
**and**  
**M.P.No.1 of 2014**



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**31.10.2019**