

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.R.P.(PD)No.3538 of 2014
and M.P.No.1 of 2014

Varudharaj ... Petitioner

Vs

Ananddinesh ... Respondent

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, against the fair and decretal order dated 18.07.2014 made in I.A.No.603 of 2014 in O.S.No.26 of 2010 on the file of the learned Additional District Munsif Court, Namakkal.

For Petitioner : Mr.N.Manokaran

For Respondent : Mr.T.Dhanya Kumar

ORDER

The instant Civil Revision Petition has been filed by the petitioner challenging the order of dismissal dated 18.07.2014, passed by the Additional District Munsif Court, Namakkal, in I.A.No.603 of 2014 in O.S.No.26 of 2010.

Brief facts leading to the filing of the instant revision filed under Article 227 of the Constitution of India:

2.The petitioner is the defendant in the suit O.S.No.26 of 2010, pending on the file of the Additional District Munsif Court, Namakkal. The said suit was filed for declaration and injunction in respect of the suit schedule property. A written statement was also filed by the petitioner/defendant in the said suit. Issues were also framed by the trial Court and thereafter, trial also commenced. In the midst of trial, the petitioner who is the defendant in the suit filed I.A.603 of 2014, seeking permission of the trial Court to file additional written statement.

3.By order dated 18.07.2014, the Additional District Munsif Court, Namakkal, dismissed I.A.No.603 of 2014 in O.S.No.26 of 2010

4.Aggrieved by the same, the instant Civil Revision Petition has been filed under Article 227 of the Constitution of India.

5.Heard Mr.N.Manokaran, learned counsel for the petitioner and Mr.T.Dhanya Kumar, learned counsel for the respondent.

6.The learned counsel for the petitioner drew the attention of this Court to a judgment of the Hon'ble Supreme Court in the case of ***Olympic Industries vs. Mulla Hussainy Bhai Mulla Akberally and Others*** reported in **(2009) 15 SCC 528** and in particular he referred to paragraph No.18 of the said judgment which reads as follows:

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.

7.This Court has also perused the additional written statement which the petitioner/defendant seeks to file in the suit O.S.No.26 of 2010. As seen from the additional written statement in paragraph No.3 of the said additional written statement, a categorical plea has been taken by the petitioner that the thumb impression of the petitioner/defendant found in the Will is not a genuine one. Further, it

has been categorically stated that the comparison of the disputed thumb impression found in the Will with a document No.4 along with the plaint is not relevant to the facts of the present case. Therefore, as seen from the additional written statement, the petitioner/defendant is disputing the Will which the respondent/plaintiff claims to be a genuine one.

8. Therefore, for effective adjudication of the dispute between the parties, additional written statement is necessary as pleadings made in the additional written statement by the petitioner/defendant were never pleaded in the written statement originally filed by him before the trial Court. The judgment of the Hon'ble Supreme Court reported in **(2009) 15 SCC 528** relied upon by the learned counsel for the petitioner is squarely applicable for the instant case.

9. Therefore, the trial Court ought to have allowed I.A.No.603 of 2014 filed by the petitioner/defendant seeking permission of the trial Court to file additional written statement in view of the reasons stated above, instead the trial Court erroneously dismissed I.A.No.603 of 2014.

10.For the foregoing reasons, the impugned order dated 18.07.2014, passed by the Additional District Munsif Court, Namakkal, in I.A.No.603 of 2014 in O.S.No.26 of 2010, is hereby set aside and the Civil Revision Petition is allowed. In view of the long pendency of the suit, a direction is given to the trial Court to dispose of the suit within a period of three months from the date of receipt of a copy of this order. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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Index: Yes/ No
Internet: Yes/No
Speaking Order/Non-speaking Order

To

The Additional District Munsif Court, Namakkal.

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ABDUL QUDDHOSE, J.

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