



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

C.R.P. (MD)No.1121 of 2012
and M.P. (MD)No.1 of 2012

U.Arumugam : Petitioner/Petitioner/Defendant

Vs.

Ramaiah Nadar : Respondent/Respondent/Plaintiff

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order passed in I.A.No.73 of 2012 in O.S.No.115 of 2007 dated 09.03.2012 on the file of the Principal District Munsif Court, Nanguneri by allowing this Civil Revision Petition.

For Petitioner : Mr.H.Arumugam

For Respondent : Mr.S.R.Anbarasu

ORDER

This Civil Revision Petition has been filed against the fair and final order passed by the Court below dismissing an application filed by the petitioner under Order 8 Rule 9 of C.P.C., to permit the petitioner to file an additional written statement.

2.The petitioner is the second defendant in the suit. The respondent had filed a suit against the petitioner and another seeking for the relief of permanent injunction. Initially, a written statement came to be filed by the petitioner on 19.08.2008 and further written statement was also filed on 24.08.2011, after the plaint was amended. Thereafter, the petitioner filed a petition under 8 Rule 9 of C.P.C., to file additional written statement on the ground that there was already an earlier suit that was filed by the respondent in O.S.No.46 of 2008 and the said suit was dismissed. By oversight, this fact was not mentioned in the earlier written statement and therefore, permission was sought for to mention this fact by means of filing an additional written statement.

3.The Court below dismissed the application on the ground that the petitioner sought to have mentioned the earlier suit that was



filed by the respondent in the original written statement and that the petitioner has not even filed the judgment in the earlier suit and therefore, the permission sought for by the petitioner to file additional written statement was rejected.

4.The learned counsel appearing on behalf of the petitioner submitted that the Court below ought not to have insisted for the filing of pleadings in the earlier suit at the stage of deciding the application under Order 8 Rule 9 of C.P.C. The learned counsel further submitted that the petitioner was only trying to bring the important fact, which will have a bearing in the case and the Court below should have given an opportunity to the petitioner to file additional written statement. Admittedly, the effect of the judgment in the earlier suit should have been decided in the course of trial. Therefore, the learned counsel submitted that the order of the Court below requires interference of the Court.

5.Per contra, the learned counsel appearing for the respondent submitted that the Court below has given specific reasons for dismissing the application and there is absolutely no ground to interfere with the same.

6.The additional written statement was sought to be filed by the petitioner only on the ground that there was an earlier suit between parties and the same got dismissed and the said fact was not mentioned in the earlier written statement and that the said fact will have a bearing while deciding in the present suit.

7.In the considered view of this Court, the petitioner was not attempting to come up with a totally new case by filing additional written statement. The petitioner was only attempting to bring to the knowledge of the Court a fact, which is incline with the defence that was taken by the petitioner in the original written statement. The Court below ought to have allowed the application and permitted that petitioner to file additional written statement. Insofar as the merits of the case is concerned, the same should have been decided in the course of trial and there was no requirement for the Court below to go into the merits even while deciding the application filed under Order 8 Rule 9 of C.P.C.

8.In the considered view of this Court, the Court below exceeded its jurisdiction and therefore, the order of the Court below requires interference of this Court.

9.In the result, the fair and final order passed by the Court below dated 09.03.2012 in I.A.No.73 of 2012 in O.S.No.115 of 2007 is hereby, set aside and the additional written statement is directed to be taken on file. Accordingly, this Civil Revision Petition is allowed. The Principal District Munsif Court, Nanguneri is directed to complete the proceedings in O.S.No.115 of 2007, within a period of three months from the date of receipt of copy of this order. No



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costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

gns

To

The Principal District Munsif, Nanguneri.

+1 CC to M/s.H.ARUMUGAM, Advocate (SR-91693[F] dated 10/10/2019)

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