



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.11.2019

CORAM

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P. (NPD) (MD)No.1866 of 2013

and

M.P(MD) No.1 of 2013

1.Arumnayagam
2.Saraswathi
3.Paulmoni

... Petitioners/Defendants/Petitioners

Vs.

Sudha Rani

... Respondent/Plaintiff/Respondent

PRAYER:- Civil Revision Petition filed under Article 227 of Constitution of India, against the order and decreetal dated 29.08.2013 of the learned Principal District Munsif, Padmanbhapuram, made in I.A.No.282 of 2013 in O.S.No.195 of 2011 on his file.

For Petitioners : Mr.K.N.Thampi

For Respondent : Mr.M.P.Senthil

ORDER

This Civil Revision Petition is filed by the defendants challenging the refusal of the Principal District Munsif, Padmanbhapuram, to permit them to file an additional written statement.

2.The facts in brief which are necessary for disposing of the civil revision petition are as follows:-

The respondent/plaintiff had filed a suit in O.S.No.195 of 2011 on the file of the Principal District Munsif Court, Padmanbhapuram, for the following reliefs:-

A.The plaintiff be given a decree for declaration declaring the plaintiff's valid title and possession over the plaint C-schedule item be granted.

B.The plaintiff be given a decree for declaration of plaintiff's title and for recovery of possession of the plaint B-schedule item be granted.

C.The plaintiff be given a decree for declaration,

declaring that the sale deed dated 20.10.2010, No.4290 of



2010 of Eraniel Sub Registrar Office is void ab initio, in operative, ineffective one and it will not bind the plaintiff as well as the plaint B-Schedule item in any manner be granted.

D. The plaintiff be given a decree for mandatory injunction directing the third defendant to remove the newly put up shed made by cement bricks with asbestos roof as existing in the plaint B-schedule item at his own cost within the prescribed time to be fixed by the Honourable Court and if the third defendant failed to do so, the plaintiff may be permitted to remove the same and recover the expenses from the third defendant be granted.

E. The plaintiff be given a decree for consequential injunction restraining the defendants and their men, agents, servants from trespassing into the plaint C-schedule item and committing any acts of waste or damage therein be granted.

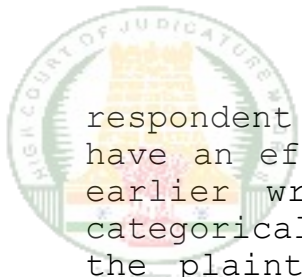
The revision petitioner herein, who are defendants 1 and 2, had filed a written statement wherein they had made certain admission accepting the fact that they had executed the settlement in favour of their son Kumar, who is the husband of the plaintiff, besides raising other defence. Thereafter, the petitioners come forward with the petition which is the subject matter of the revision petition, stating that they had to clarify certain statement made by them in the original written statement and had added certain facts. For this purpose, requested the permission of the Court to file an additional written statement with the view to avoid multiplicity of proceedings.

3. The said application was vehemently opposed by the respondent / plaintiff, who would state that it is nothing, but an attempt to retract the admission given in the original written statement, which would cause prejudice to the plaintiff.

4. The learned Principal District Munsif, Padmanbhapuram, by an order dated 29.08.2013 was pleased to dismiss the said application. The dismissal is primarily on the ground that by virtue of this additional written statement, the petitioners were retracting the admission made earlier and the same could not be permitted. The said order is subject matter of challenge in the above civil revision petition.

5. Heard Mr. K. N. Thambi, learned counsel appearing for the revision petitioners, who would contend that by filing an additional written statement, there is no amendment that is sought with reference to the original written statement and it is only in the form of clarification of the plea already taken and therefore, there is no prejudice caused to the plaintiff.

6. Per contra, Mr. M. P. Senthil, learned counsel appearing for the
<https://hcservices.ecourts.gov.in/hcservices/>



respondent would contend that the additional written statement would have an effect to set at naught the admission already made in the earlier written statement, wherein the defendants 1 and 2 have categorically admitted the execution of settlement deed in favour of the plaintiff's husband. In support of his contention that the defendants cannot take mutually destruct the plea by filing additional written statement, he would also rely on the following judgments:-

(i) **(2008) 4 MLJ 468 (SC)** in the case of **Gautam Sarup Vs. Leela Jetly and Others.**

(ii) **(2009) 3 MLJ 959** in the case of **Tajdeen Vs. Abdul Muthalif.**

(iii) **2013 (3) MWN (Civil) 694** in the case of **Ilayaperumal Vs. Madras Cements.**

7. Heard the learned counsel appearing on either side and perused the papers.

8. The petitioners/defendants 1 and 2 are only seeking to place on record the additional written statement which would be read along with original written statement. It is well open to the plaintiff to take advantage of the inconsistent plea in both written statements and no prejudice is going to be caused to the plaintiff since the so-called admission would continue to remain in the original written statement. Further, it is well open to the plaintiff to file a reply statement refuting the averments that is now made in the additional written statement. Even in the judgment reported in **(2008) 4 MLJ 468 (SC)** in the case of **Gautam Sarup Vs. Leela Jetly and Others**, our Hon'ble Apex Court has held as follows:-

22. What, therefore, emerges from the discussion made hereinbefore is that a categorical admission cannot be resiled from but, in a given case, it may be explained or clarified. Offering explanation in regard to an admission or explaining away the same, however, would depend upon the nature and character thereof. It may be that a defendant is entitled to take an alternative plea. Such alternative pleas, however, cannot be mutually destructive of each other.

9. In the light of the above and considering the fact that the statement made in earlier written statement continues to remain on file, no prejudice is going to be caused to the plaintiff. Therefore, the order of the learned Principal District Munsif, Padmanbhapuram, requires to be set aside.

10. Accordingly, this Civil Revision Petition is allowed and the order dated 29.08.2013 made in I.A.No.282 of 2013 in O.S.No.195 of 2011 on the file of the learned Principal District Munsif, Padmanbhapuram is set aside. It is needless to state that the



plaintiff shall be permitted to file a reply statement if required to the additional written statement that has been filed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CrI.Side)

// True Copy //

Sub Assistant Registrar(CS)

cp

To

The Principal District Munsif,
Padmanbhapuram.

+1 CC to M/s.K.N. THAMPI, Advocate (SR-97905[F] dated 13/11/2019)

+1 CC to M/s.M.P.SENTHIL, Advocate (SR-98181[F] dated 14/11/2019)

C.R.P. (NPD) (MD)No.1866 of 2013

and

M.P (MD) No.1 of 2013

13.11.2019

JMN(03.12.2019) 4P : 4C