



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 24.01.2019

DELIVERED ON : 04.06.2019

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P. (PD) (MD) No.2666 of 2018

and

C.M.P. (MD) .No.11707 of 2018

A.Sabi Ahamed .. Petitioner/1st respondent / Plaintiff

vs.

1.Azhagu

2.Sinthiya

3.Vignesh Raja

.. Respondents 1 to 3/
Petitioners / Defendants 3 to 5

Sethubaskaran (died)

4.Anbarasi

... 4th respondent /
3rd respondent/ 2nd defendant

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order, dated 27.09.2018 passed in I.A.No.559 of 2018 in O.S.No.71 of 2012 by the Subordinate Judge, Ramanathapuram.

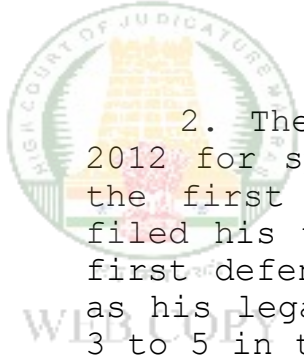
For Petitioner : Mr.D.Malaichamy

For respondents 1 to 3 : Mr.V.Sitharanjandas

For 4th respondent : No appearance

ORDER

This Civil Revision Petition has been filed by the petitioner / plaintiff challenging the order, dated 27.09.2018, passed in I.A.No.559 of 2018 in O.S.No.71 of 2012, whereby and whereunder the Court below allowed the petition filed by the respondents 1 to 3 herein / defendants 3 to 5 seeking to accept the additional written statement.

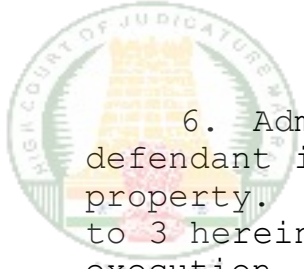


2. The petitioner / plaintiff filed the suit in O.S.No.71 of 2012 for specific performance based on the sale agreement, against the first defendant by name Sethubaskaran. The first defendant filed his written statement. During the pendency of the suit, the first defendant died leaving behind the respondents 1 to 3 herein as his legal heirs and therefore, they were impleaded as defendants 3 to 5 in the main suit. The respondents 1 to 3 / defendants 3 to 5 have made an endorsement adopting the written statement filed by the first defendant and therefore, the trial has been proceeded. But, after commencement of the trial, the respondents 1 to 3 herein / defendants 3 to 5 filed I.A.No.71 of 2012 seeking permission of the Court to accept the additional written statement. The Court below has allowed the said petition with cost of Rs.1000/- to be payable to the petitioner/plaintiff. Questioning the same, the present revision petition has been filed by the petitioner/plaintiff.

3. The learned counsel appearing for the petitioner/plaintiff would submit that after giving sufficient time for filing additional written statement and after the endorsement made by the respondents 1 to 3 herein adopting the written statement filed by the first defendant, the trial was commenced and PW1 was examined. While so, the respondents 1 to 3 filed an application under Order 8 Rule 9 C.P.C. which is illegal and against law. He would further submit that the first defendant has not specifically pleaded about the right of these respondents 1 to 3 herein in his written statement and therefore, the respondents 1 to 3 herein cannot raise new plea by way of additional written statement. He would further submit that the defence taken in the additional written statement is contrary to the defence set up by the first defendant and therefore, the same cannot be accepted. The Court below, without considering the said aspects, has erroneously allowed the petition filed by the respondents 1 to 3 herein and accepted their additional written statement. Thus, he prayed to set aside the impugned order.

4. The learned counsel appearing for the respondents 1 to 3 herein would submit that the property in respect of which the sale agreement was entered is the ancestral property of the first defendant and the respondents 1 to 3 herein, and therefore, the respondents 1 to 3 herein are entitled to 1/16th share out of the total extent. But, the said fact, due to oversight, omitted to be mentioned by the first defendant and therefore, the respondents 1 to 3 herein filed additional written statement raising the said plea. The Court below, after having an elaborate discussion, has allowed the petition filed by the respondents 1 to 3 herein and accepted the additional written statement. Therefore, the order passed by the Court below need not be interfered with. Thus, he prayed to dismiss this petition.

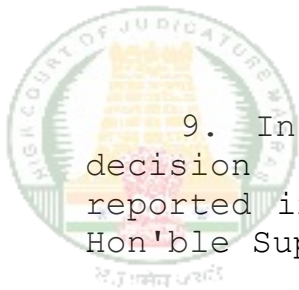
5. Heard the learned counsel for both sides and perused the records carefully.



6. Admittedly, the sale agreement was executed by the first defendant in respect of undivided 1/4 share over the plaint schedule property. The first defendant viz., the father of the respondents 1 to 3 herein as well as the respondents 1 to 3 herein have agreed the execution of the sale agreement. The defence taken by the first defendant is that the petitioner/plaintiff has failed to perform his part of contract. Now the respondents 1 to 3 wanted to introduce a new plea that they are also having 1/16th share in the suit property stating that the first defendant omitted to raise the same in the written statement. The fact remains that though they have been given sufficient opportunity to file additional written statement, they have chosen to adopt the written statement filed by their father viz., the first defendant and after the commencement of trial, they have filed the petition under Order 8 Rule 9 C.P.C. seeking permission of the Court to file additional written statement.

7. Order 8 Rule 9 of C.P.C. provides for subsequent pleadings by the defendants. As per the said provision, it is the discretion of the Court to decide as to whether the additional written statement has to be accepted or not. While exercising discretion, the Court has to consider the conduct of the party, stage of the litigation, reason for the failure to raise the same in the original written statement, how far the opposite party will be put to hardship, etc. According to the respondents 1 to 3, due to oversight, the said statement has not been raised in the earlier written statement by their father viz., the first defendant. The reason stated by the respondents 1 to 3 is not only artificial but also unacceptable. The respondents 1 to 3 herein impleaded in the suit in the year 2016. After about 2 years and after adopting the written statement filed by their father, the respondents 1 to 3 have filed the petition seeking permission of the Court to file additional written statement. Absolutely, the respondents 1 to 3 herein have not stated any reason for their failure to raise the said statement immediately after their impleadment.

8. In a catena of decisions, it has been held that the additional written statement should not set up a totally new case or state facts at direct variance with the original written statement so as to completely change the issue in the case. In this case, the respondents 1 to 3 herein having admitted that their father had executed the sale agreement in respect of the undivided 1/4 share of ancestral property, now by way of filing additional written statement, they wanted to add a new case that the respondents 1 to 3 herein are entitled to 1/16 share out of the total plaint schedule property and the first respondent, who had right over 1/16 share of the plaint schedule property, did not have any right to execute the sale agreement in respect of 4/16 share. It is totally inconsistent with the plea raised in the original written statement. In effect, allowing of additional written statement, in this case, would take away the admission made in earlier pleadings.



9. In this regard, this Court is inclined to refer to the decision in **Bollepanda P.Poonacha and another Vs. K.M.Madapa** reported in **2008 (2) CTC 523 (SC) : 2008 (13) SCC 179**, wherein the Hon'ble Supreme Court at paragraph No.15 has held as follows:

"15.A belated counterclaim must be discouraged by this Court. See Ramesh Chand Ardawatiya Vs. Anil Panjwani. We are, however, not unmindful of the decisions of this Court where a defendant has been allowed to amend his written statement so as to enable him to elaborate his defence or to take additional pleas in support of his case. The Court in such matters has a wide discretion. It must, however, subserve the ultimate cause of justice. It may be true that further litigation should be endeavoured to be avoided. It may also be true that joinder of several causes of action in a suit is permissible. The Court, must, however, exercise the discretionary jurisdiction in a judicious manner. While considering that subservance of justice is the ultimate goal, the statutory limitation shall not be overstepped. Grant of relief will depend upon the factual background involved in each case. The Court, while undoubtedly would take into consideration the questions of serious injustice or irreparable loss, but nevertheless should bear in mind that a provision for amendment of pleadings is not available as a matter of right under all circumstances. One cause of action cannot be allowed to be substituted by another. Ordinarily, effect of an admission made in earlier pleadings shall be not permitted to be taken away. See State of A.P. vs. Pioneer Builders and Steel Authority of India Ltd., Vs. Union of India and Himmat Singh Vs. ICI India Ltd."

(emphasis supplied)

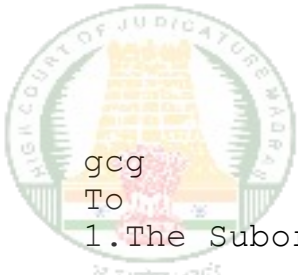
10. In this case, the real question in controversy between the parties will be changed if the petition seeking to accept the additional written statement is allowed. The Court below, without considering the said aspects, has erroneously allowed the petition, which warrants interference of this Court.

11. In the result, this Civil Revision Petition is allowed and the order passed by the Court below is set aside. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

/ True Copy /



gcg

To

1.The Subordinate Judge, Ramanathapuram.

2.The Record Keeper,

V.R. Section,

Madurai Bench of Madras High Court,

Madurai(2 copies).

+1 CC to M/s.V.SITHARANJANDAS, Advocate

(SR-66851[F] dated 04/06/2019)

+1 CC to M/s.D.MALAICHAMY, Advocate (SR-66757[F] dated 04/06/2019)

order made in
C.R.P. (PD) (MD) No.2666 of 2018
04.06.2019

ES/11.06.2019/5P/6C