

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP (PD) No.1186 of 2018 and
CMP No.6151 of 2018

1. Gouthamraj

2. Ramya

Petitioners 1 and 2 represented
by their Power agent Sakkubai

3. Sakkubai

... Petitioners

Vs

Punithavathi

... Respondent

Prayer: The Civil Revision petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decreetal order of the learned II Additional District Munsif Court, Virudhachalam, passed in I.A.No.62 of 2018 in O.S.No.306 of 2007 dated 06.03.2018.

For Petitioners : Mr.J.Antony Jesus

For Respondent : Mrs.R.Meenal

ORDER

The defendants 2 to 4 in O.S.No.306 of 2007 are on revision, challenging an order dismissing their application in I.A.No.62 of 2018, seeking leave to file an additional written statement.

2. The suit was filed by the plaintiff claiming title on the basis of the Sale deed, dated 23.04.1998 executed by the heirs of one Venkatesa Iyer, who in-turn had purchased the property under the Sale deed, dated 27.12.1985. On the strength of the above title, the plaintiff sought for declaration of her title to the super structure and for consequential injunction.

3. The defendants resisted the suit contending that the sale in favour of Venkatesa Iyer itself is not valid and it was executed by the father-in-law of the plaintiff Kuppusamy Gounder who had no power to execute such Sale Deed. A claim was also made to the effect that Kuppusamy Gounder exceeded his power as a testamentary guardian of the minor legatees. When the suit was taken up for trial, after partial cross examination of P.W.1, the defendants came up with the instant application in

I.A.No.62 of 2018 seeking permission to file an additional written statement. In the additional written statement, they wanted to raise a plea that Kuppusamy Gounder in effect acted as the executor of the will. Though was termed as the guardian of the minor in the testamentary instrument, he in fact was empowered to be the executor of the estate of the deceased Periyasamy Gounder, the testator. The defendants also wanted to highlight the fact that Kuppusamy Gounder has exceeded his powers and sold the property that was bequeathed to the minors and had enriched himself by purchasing the suit property through the plaintiff who is his daughter-in-law.

4. This application was rejected by the trial Court on the ground that these questions are only legal pleas and they can be raised even without pleadings.

5. I have heard Mr.J.Antony Jesus, learned counsel appearing for the petitioners and Mrs.R.Meenal, learned counsel appearing for the respondent.

6. Mr.J.Antony Jesus, learned counsel appearing for the petitioners would point out that the trial Court was wrong in concluding that the pleas that are sought to be raised in the additional written statement are only questions of law and they can be raised even without support of the pleadings. He would point out that the questions whether Kuppusamy Gounder acted as a guardian for the benefit of the family is essentially a question of fact and the same has to be decided on evidence. If evidence has to be let in on the said questions, there should be factual foundation form of pleadings. Therefore, according to him, the trial Court was not right in concluding that the pleas that are raised in the Additional written statement are pure questions of law. He would also point out that the plea of the plaintiff that Kuppusamy Gounder was empowered to alienate the properties of the testator in order to satisfy the debts of the testator. Therefore the pleadings to the effect that Kuppusamy Gounder acted as a executor of the will of Periyasamy Gounder is to be raised in the additional written statement.

7. Contending contra, Mrs.R.Meenal, learned appearing for the

respondent/plaintiff would submit that all these pleadings were already in the original written statement. There is no necessity for reiteration of the same by way of additional written statement. She would also point out that the application itself has been filed after the commencement of trial. I have considered the rival submissions.

8. On the second submission of the learned counsel for the respondent to the effect that the application has been filed after commencement of trial, there is no proviso similar to Order VI Rule 17 of the Code of Civil Procedure to Order VIII Rule 9 of the Code of Civil Procedure. It enables the parties to file subsequent pleadings. The Courts have held that the proviso to Order VI Rule 17 of CPC, cannot be extended to subsequent pleadings filed under Order VIII rule 9 of CPC, more so, when the Legislature has not, consciously, made provision akin to Proviso to Order VI Rule 17 in Order VIII Rule 9 of CPC. More over, from the perusal of the additional written statement, it could be seen that the pleadings that are raised in the additional written statement are supplemental to and only in addition to what has been stated in the original

written statement. There is no new case that has been projected.

9. As regards the delay, the cross examination of P.W.1 is yet to be completed. Of course, there is some delay. But the said delay by itself will not provide the basis for dismissing the application for leave to file an additional written statement. On the whole, I am convinced that this is a case where the trial Court erred in dismissing the application and the order of the trial Court needs to be interfered with. The revision is therefore allowed. I.A.No.62 of 2018 will stand allowed. The order of the trial Court is set aside. The petitioner will have right to file an additional written statement, if any. No costs. Consequently, connected miscellaneous petition is closed.

10.12.2020

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Index: Yes/No

Speaking order / Non speaking order

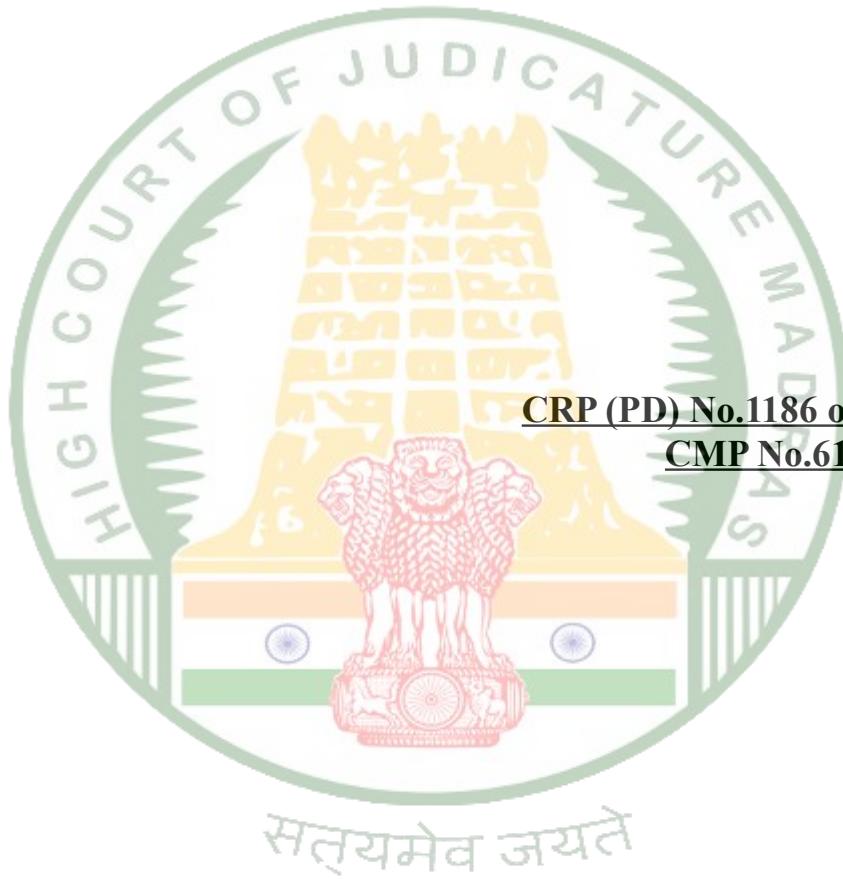
To:

The II Additional District Munsif Court, Virudhachalam

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