

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.11.2020

CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAM

C.R.P.No.2187 of 2018 and

C.M.P.No.13777 of 2018

1. S.M.Subramani
2. Sampath

....Petitioners/ Defendant

Vs

1. M.Baskar
2. Venkatesan
3. Sumathi
4. Bharathi
5. Muniammal
6. R.Ekambaram
7. Dhannammal
8. Valliammal
9. Devaki
10. Pattammal

...Respondents/Plaintiff

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the order and decree dated 25.06.2018 passed in I.A.No.265 of 2017 in O.S.No.197 of 2007 on the file of learned District Munsif Court, Sholinghur, Vellore by allowing present Civil Revision Petition.

For Petitioners : Mr.A.Gouthaman

For Respondents : Mr.Prakash Adiapadam

ORDER

The defendants 1 and 8 in O.S.No.197 of 2007 have come up with this Revision challenging the order rejecting their request for leave to file additional written statement made in I.A.No.265 of 2017. The suit is one for partition. The 1st defendant filed their original written statement, which was adopted by the 8th defendant, contending that he has purchased the suit property from some of the plaintiffs by way of the registered sale deed, as well as by way of oral sale, thus,

setting up title to the properties. He would also contend that he sold the property to the 8th defendant subsequently. The suit was posted for further evidence. The defendants 1 and 8 came up with the instant application seeking permission to file additional written statement raising the question of ouster and reiterating the oral sale as well as sale by way of registered instrument, the trial court found that the application is highly belated and dismissed the same.

2. I have heard Mr.A.Gouthaman, learned counsel appearing for the petitioners and Mr.Prakash Adiapadam, learned counsel appearing for the respondents.

3. Mr.A.Gouthaman, learned counsel appearing for the petitioners would vehemently contend that the trial court was not justified in dismissing the application solely on the ground of delay. Contending contra, Mr.Prakash Adiapadam, learned counsel appearing for the respondents would submit that the additional written statement raised mutually contradictory pleas, therefore, it ought not to be allowed. I have considered the rival submissions.

4. As regards the first contention, Paragraph Nos.3 and 4 of additional written statement, they relate to oral sale as well as sale by way of registered instrument, which have already been raised in the original written statement, therefore, there is no need to raise the very same pleadings in the additional written statement. As regards claim of ouster made in para 5, the defendants have set up title, therefore, are precluded from claiming ouster. Hence I do not think that the trial court can be faulted for dismissing the application on the ground of delay.

5. As already pointed out major part of the evidence is completed and suit is posted for further evidence, if the additional written statement is allowed at this stage, the suit is to be re-heard in full by allowing the plaintiff to file a reply statement and to let in evidence afresh. Order 8 Rule 9 of Civil Procedure Code is not meant for enabling such rehearing of the suit, after the trial is almost over.

In view of the above, the Civil Revision Petition is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

sd/

ASSISTANT REGISTRAR

/TRUE COPY/

SUB-ASSISTANT REGISTRAR

ssd

To

The District Munsif Court,
Sholinghur, Vellore

+1CC to Mr.A. GOUTHAMAN, Advocate SR.NO.338358
+1CC to Mr.PRAKASH ADIAPADAM, Advocate SR.NO.38636

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AJS (CO)

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