

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.(PD).No.2578 of 2018

1. Alamelu

2. Minor. Karthikeyan

3. Minor. Nivetha

.. Petitioners

Vs.

1. Iyyadurai

2. Saraswathi

3. Arumugam

.. Respondents

Prayer: Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order passed in I.A.No. 70 of 2018 in O.S.No. 218 of 2015, dated 19.07.2018 on the file of Additional District Munsif Court, Tirupattur, Vellore District.

For Petitioners : Mr.Sureshkumar

For respondents : Mr.Udhayakumar

ORDER

This Revision is at the instance of the defendants 1 to 3 in O.S.No. 218 of 2015, challenging the order in I.A.No. 70 of 2019, rejecting their request for filing an additional written statement. The suit was laid by

the plaintiff seeking specific performance of an agreement of sale dated 30.09.2013. The defendants resisted the suit contending that they have not executed any power of attorney in favour of the 5th defendant and also denied the claim of the plaintiff that the 5th defendant had entered into an agreement of sale on 30.09.2013 in his capacity as the agent of the first defendant to sell the suit property for a sum of Rs.75,000/- and had received a sum of Rs.25,000/- as advance. It was also pleaded that the brothers of the husband of the first defendant have filed a suit in O.S.No.75 of 2001 on the file of the Principal District Munsif, Tirupathur for partition and the same is pending.

2. During the pendency of the suit, the defendants came up with this application seeking permission to file an additional written statement claiming that the first defendant is not the absolute owner of the property. It is also claimed that the power of attorney was sham and nominal and not intended to be acted upon. This application was resisted by the plaintiff contending that a totally new case is sought to be set up by the defendants through additional written statement and therefore, the same cannot be

allowed. The trial court agreed with the defence and dismissed the application.

3. Heard Mr.Sureshkumar, learned counsel appearing for the petitioner and Mr.Udhayakumar, learned counsel for M/s.Karan & Uday appearing for the respondents.

4. Mr.Sureshkumar, learned counsel appearing for the petitioners would vehemently contend that the contents of the additional written statement are only clarificatory in nature and therefore, the trial court was not right in rejecting the same. He would also point out that, all that the defendants have attempted to do is to include the final details of the title to the property and it does not amount to setting up of a new defence, which is inconsistent with the defence already taken. He also contended that inconsistent defence is available to the defendants.

5. Contending contra, Mr.Udhayakumar, learned counsel appearing for the respondent would submit that the trial court was justified

in rejecting the application, since the defendants have sought to introduce a dispute as regards the title to property which is beyond the scope of a suit for specific performance.

6. I have considered the rival submissions. As regards the rejection of the application in respect of the allegations found in paragraphs 2 & 3 of the written statement, I do not find any irregularity in the order of the trial court. As rightly pointed out by the learned counsel for the petitioner. By introducing the said pleadings the defendants seek to project title of a third party. Hence, the trial court was justified in rejecting the application in respect of the claims made in paragraphs 2 & 3 of the additional written statement. However, in paragraph Nos. 4 & 5, all that is sought to be done is to explain the defence in detail. No new fact or any inconsistent case is set out. Hence, the claims in paragraph Nos.4 and 5 are permissible under law.

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7. The learned counsel for the respondents would point out that the application has been filed after the commencement of trial. It should be

pointed out that the Order VIII Rule 9 enables the subsequent filing of pleadings. Therefore, I do not think that the trial court was right in rejecting the entire additional written statement. It should have allowed the same, atleast in respect of paragraphs 4 & 5. In so far as paragraph 6 of the additional written statement is concerned, the plaintiff seeks to invoke the title of the third party, which cannot be permitted. Therefore, the Civil Revision Petition is partly allowed only with reference to the pleadings in paragraphs 4 and 5 of the Additional Written Statement. It stands rejected in respect of the averments in paragraph 2, 3 and 6. There will be no order as to costs.

23.11.2020

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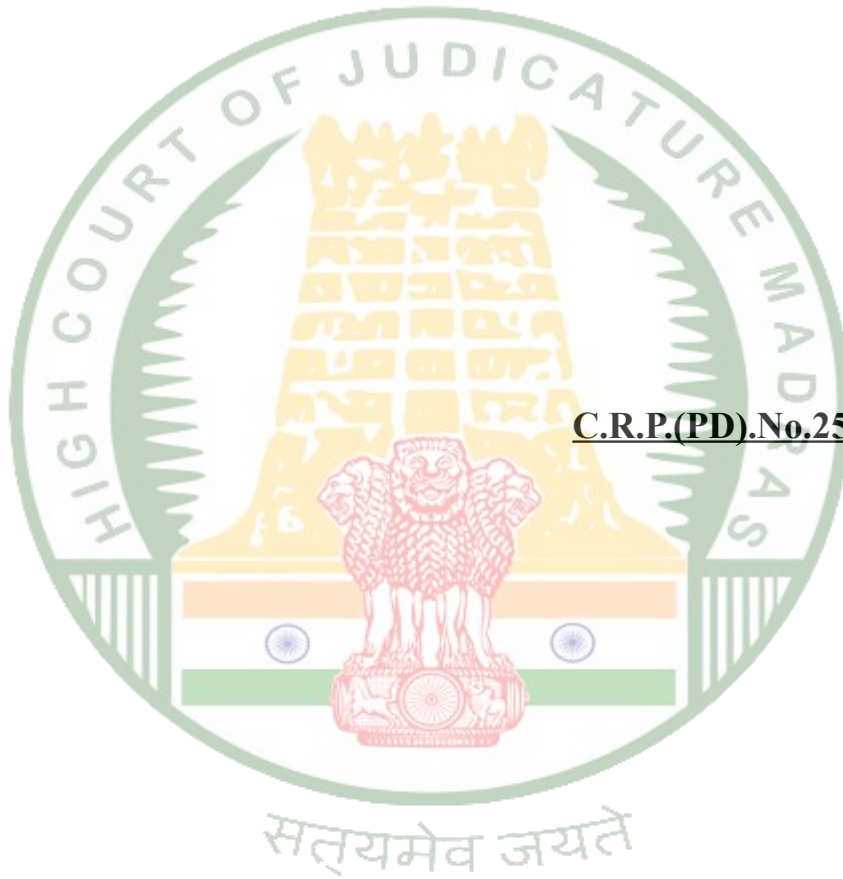
Internet: Yes/No

Index: Yes/No

To
The learned Additional District Munsif Court,
Tirupattur, Vellore District.

R.SUBRAMANIAN, J.

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