

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.11.2020

CORAM

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.No.89 of 2018

1. Lalith Kumar Jain @ Lalith Jain
2. Ashokkumar ... Petitioners

Vs.

1. N.G.Deivasigamani
2. S.Sumathi
3. D.Dhanam
4. M.Chenniappan
5. C.Shanmugam ... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 01.11.2017 made in I.A.No.657 of 2017 in O.S.No.86 of 2014 on the file of the Sub Court, Perundurai.

For Petitioners : Mr.N.Manoharan

For Respondents : Mr.S.Sounthar

ORDER

This revision is against the order dismissing the application filed by the defendants in I.A.No.657 of 2017 in O.S.No.86 of 2014 seeking leave to file an additional written statement.

2. A very strange suit with the novel prayer, which reads as follows :

"a. declare the power of attorney executed by the 1<sup>st</sup> defendant in favour of the 2<sup>nd</sup> defendant on 12.04.2010 registered before the Sub Registrar Office, Perundurai, as Document No.445 of 2010 is null and void and not binding on the plaintiffs.

b. awarding cost of the suit.

c. grant such further and other reliefs sought for by the plaintiffs to the petitioners herein in the year 2014."

has been filed by the plaintiff.

3. The suit is resisted by the defendants claiming that the plaintiffs had entered into an agreement of sale with the defendants on 23.10.2009 agreeing to sell the suit property of an extent of about 14 acres for a consideration of Rs.38,500/- per cent and an advance of Rs.1,35,00,000/- has been paid by the defendants to the plaintiffs. The plaintiffs not disputing the validity and genuineness of the sale agreement dated 23.10.2009. It appears that several suits have been filed and they are pending in various courts, while so, the plaintiffs came up with the present suit.

4. The defendants would contend that since the 1<sup>st</sup> defendant had to go to U.S.A., he had appointed a power agent to manage the property as well as the litigation. The suit went for trial, and when the suit was posted for defendants' evidence, the defendants filed instant application in I.A.657 of 2017 seeking leave to file additional written statement. The proposed additional written statement only raises the ground of limitation.

5. This application was opposed by the respondents/plaintiffs contending that the application is highly belated and it cannot be entertained after the trial had commenced.

6. The Learned Trial Judge concluded that the application is belated and an additional written statement cannot be received after commencement of trial. The Learned Trial Judge also relied upon the Judgment of this Court reported in 2016 (4) CTC 750 in support of her conclusion. On the above conclusion, the learned Trial Judge dismissed the application. Aggrieved, the defendants are under revision.

7. I have heard Mr.N.Manoharan, learned counsel appearing for the petitioners, and Mr.S.Sounthar, learned counsel appearing for the respondents.

8. I am convinced that the order of the Trial Court has to be set aside. Even in the decision referred by the Learned Trial Judge, this Court had allowed the application for receiving of additional written statement by imposing cost. This Court had relied upon the Judgment of the Hon'ble Supreme Court in Olympic Industries vs. Mulla Hussainy Bhai Mulla Akberally and Others reported in 2009 15 SCC 528 in support of its conclusion. This Court has specifically concluded that the prohibition contained by proviso under Order 6 Rule 17 of C.P.C., will not apply to the case of additional written statement filed under Order 8 Rule 9 of C.P.C. Even the Hon'ble Supreme Court in Olympic Industries vs. Mulla Hussainy

Bhai Mulla Akberally and Others reported in 2009 15 SCC 528 has held that no prejudice would be caused to the parties by the receipt of additional written statement. Therefore, the Court should be liberal in receiving such additional written statement. As already stated, the only contention that is sought to be raised by way of additional written statement is one relating to limitation. In any event, in view of Section 3 of the Limitation act, the Court is bound to go into the limit of litigation and therefore no prejudice being caused to the respondents by the receipt of the additional written statement. Hence, the order of the Trial Court is set aside and I.A.No.657 of 2017 in O.S.No.86 of 2014 will stands allowed. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

raja

To

The Judge,

Sub Court, Perundurai

+1cc to Mr.S.Sounthar , Advocate SR.No. 36776

+1cc to Mr.N.Manoharan , Advocate SR.No. 36534

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A.SK(21.01.2021)

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