

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.07.2020

CORAM

THE HON'BLE MR.JUSTICE P.VELMURUGAN

CRP.No. 3836 of 2010
and M.P.No.1 of 2010

1.Thangaraj
2.Manthrachalam ..Petitioners/2&3rd Defendants

Vs

1.Velusamy Gounder ..1st Respondent/Plaintiff
2.Kanakaraj
3.Amsaveni
4.Easwaran
5.Ramathal
6.Thangavel ..Respondents 2 & 6/Defendants 1 to 4

Prayer : Civil Revision Petition filed under Article 227 of Constitution of India to set aside the order and decreetal order in I.A.No. 1320 of 2010 in O.S.No. 251 of 2006 dated 04.10.2010 on the file of the District Munsif, Palladam.

For Petitioners : No Appearance
For Respondents : Mr.T.M.Hariharan

ORDER

The Civil Revision Petition is filed against the decreetal order in I.A.No. 1320 of 2010 in O.S.No. 251 of 2006 dated 04.10.2010 on the file of the District Munsif, Palladam.

2. The first respondent has filed suit in O.S.No. 251 of 2006 on the file of the District Munsif Court, Palladam against the 2nd respondent and the petitioners herein. The petitioners have filed written statement, subsequently, the 1st respondent file a petition to amend the plaint and the same was allowed. Petitioners have filed additional written statement, thereafter the 1st petitioner/plaintiff filed a petition to receive reply statement in I.A. No. 1320 of 2010. The trial Court dismissed the said petition and strike out the written statement filed by the petitioners. Challenging the same, the 2nd & 3rd defendants are before this Court.

3. No appearance on behalf of the petitioners. Heard the learned counsel appearing for the respondents and perused the documents available on record.

4. The revision petitioners have raised grounds in the affidavit that the trial Court ought to have seen that when the plaintiff is given an opportunity to amend the plaint, then the defendant is also entitled to file additional written statement. The learned Judge on his own cannot arrive at a conclusion that new facts are introduced in the additional written statement and to scrap the same when the plaintiff himself has not sought for such relief is unreasonable.

5. According to the 1st respondent/plaintiff, due to typographical error the sentence in the suit prayer "restraining the defendants, their representatives, their agents and their men" was omitted and the same was amended. For that, the defendants 2 & 3 /petitioners herein have filed additional written statement by introducing new facts, which are entirely contradictory to the stand taken by them in the main written statement. Therefore, the order passed by the trial Court is proper and does not require any interference.

6. On a perusal of records, it is noted that the 1st respondent had filed a suit for declaration and permanent injunction. During pendency of the said suit he filed a petition in I.A. No. 824 of 2010 to amend the prayer in the plaint to incorporate the sentence "restraining the defendants, their representatives, their agents and their men" which was omitted at the time filing the suit. The said application was allowed by the trial Court and subsequently amended plaint was filed by the 1st respondent herein. Therefore, 2nd defendant /1st petitioner herein had filed an additional written statement and the 1st respondent filed a petition to receive reply statement in I.A. No. 1320 of 2010 stating reasons that the defendants have introduced new set of facts in the additional written statement contradicting the facts stated in the main written statement. The trial Court had dismissed the said application by observing that "in the guise of filing additional written statement to the amendment they have showered in a new case. Hence their additional written statement is scraped from the proceedings and strike out the written statement".

7. Admittedly, the Additional written statement was filed by the revision petitioners after the plaint was amended and that was also received. Thereafter, the first respondent/plaintiff filed I.A.No.1320 of 2010 to receive the reply statement in that application. The Court below passed suo moto order of striking out of additional written statement filed by the petitioner. Once the Additional written statement is received, the trial

Court should give opportunity to the first respondent to file a reply statement and if the trial Court found any additional issues are necessary to be framed, the same can be framed and it can be decided only at the time of trial. Therefore, the order of the trial Court is perverse and liable to be set aside.

8. Accordingly, the trial Court is directed to receive the reply statement filed by the 1st respondent and based on the additional written statement filed by the petitioners and the reply statement filed by the 1st respondent the trial Court is directed to frame necessary issues if any, and decide the case in accordance with law.

9. With the above directions, the order in I.A.No. 1320 of 2010 in O.S.No. 251 of 2006 is set aside and the Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS III)MDU

//True Copy//

Sub Assistant Registrar

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To

The District Munsif,
Palladam.

CRP.Nos. 3836 of 2010
and M.P.No.1 of 2010

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