

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP (PD) No.3113 of 2018 and
CMP No.17947 of 2018

A.Vairavelu

.... Petitioner

Vs

1. N.Guruvayurappan
2. N.Karthikeyan
3. V.Kalatharan
4. Ramakrishnan
5. K.K.Mani
6. V.Mohammed Mustaffa
- V.Shanmuga Gounder (Died)
7. S.Balasubramaniam
8. Siva
9. Kaliammal
10. Pechimuthu
11. Nagaraj
12. Sundararajan

13. Anandakumar

14. Krishnasamy

15. Ganesh

... Respondents

Prayer: The Civil Revision petition filed under Article 227 of the Constitution of India, praying to set aside the fair and final Order dated 06.04.2018 passed by the learned V Additional District Judge, Coimbatore in I.A.No.526 of 2017 in O.S.No.655 of 2009 by allowing this Civil Revision petition.

For Petitioner : Mr.L.Mouli

For Respondents : Mr.S.Mukunth for (for R1)
M/s.Sarvabhauman Associates
Mr.P.Ravishankar (for R5)
Mr.K.S.Karthik Raja
(for R7, R9 to R15)
No appearance for R2, R3, R6 to R8

ORDER

This revision is at the instance of the 1st defendant in O.S.No.655 of 2009, a suit for specific performance.

2. The plaintiff laid the suit seeking specific performance of an agreement of sale, dated 18.06.2008 along with certain prayers for declaration regarding invalidity of certain earlier proceedings. The 1st

defendant filed a written statement specifically admitting the execution of the agreement and receipt of the advance amount. However, in paragraph No. 16 of the said written statement, the 1st defendant raised a plea that the signature found at each and every page of Xerox copy of the agreement served upon him is not his signature. Not satisfied with the conflicting pleas which were already taken, the 1st defendant chose to take advantage of the opportunity given to him to file additional written statement, consequent upon amendment of the plaint necessitated by impleading of the legal representatives of the 7th defendant, the 1st defendant filed an additional written statement, taking mutually destructive pleas and withdrawing certain admissions made by him in the earlier written statement. Upon receipt of the same, the plaintiff came up with the instant application to strike out those pleadings which are in conflict with the original written statement.

3. The learned Additional District Judge who heard the application concluded that the defendants cannot allowed to file the written statement touching upon the original plaint in the guise of filing additional

written statement for the amended plaint. The trial Court rightly observed that the permission to file an additional written statement granted upon amendment of the plaint, can only be in answer to the amendments. The defendants, in the guise of filing additional written statement for the amended plaint, cannot seek to reopen the case or introduce a new case and withdraw the admissions that were made earlier. On the said conclusion, the learned trial Judge allowed the application in part and ordered to strike out those pleadings in the additional written statement that are not in consonance with the amendments made by the petitioner in the plaint.

4. I have heard Mr.L.Mouli, in support of the revision and Mr.S.Mukunth for M/s.Sarvabhauman associates for 1st respondent.

5. Mr.L.Mouli, learned counsel appearing for the petitioner would contend that once the plaint is amended and the legal representatives are impleaded, it is open to the defendants to file additional written statement. Pointing out Paragraph No.16 of the original written statement, the learned counsel would contend that no mutually destructive plea is taken or no

admission is sought to be withdrawn. What is sought to be done is only the reiteration of what has been stated in paragraph No 16 of the original written statement.

6. Contending contra, Mr.S.Mukunth, learned counsel appearing for the 1st respondent would contend that upon amendment of the plaint, parties are allowed to file additional written statement. Such an additional written statement can only be in answer to the amendments carried out. Any further details that too in conflict with the pleadings in the original written statement, cannot be allowed.

7. I am inclined to agree with the counsel for the 1st respondent and the conclusions of the trial Court. The opportunity to file additional written statement arose because of the amendment of the plaint necessitated by impleading of the legal representatives of the 7th defendant who died pending suit. The proposed parties who are impleaded as legal representatives of the 7th defendant can file additional written statement. Even they are prohibited from taking any plea which are opposed to the

pleadings of the deceased 7th defendant. Such being the case, the 1st defendant cannot be allowed to file a additional written statement, setting out new pleadings and pleadings in conflict with the original written statement.

8. The trial Court was justified in allowing the application filed by the plaintiff to strike out those portions of the written statement which are not consonance with the pleadings in the amended plaint and which are not in reply to the amendments carried out pursuant to the order made in I.A.No.88 of 2016 and I.A.No.294 of 2017. I do not see any material irregularity or illegality in the order of the trial Court. The revision therefore fails and it is accordingly dismissed. No costs. Consequently, connected miscellaneous petition is closed.

14.12.2020

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Index: Yes/No

Speaking order / Non speaking order

To:

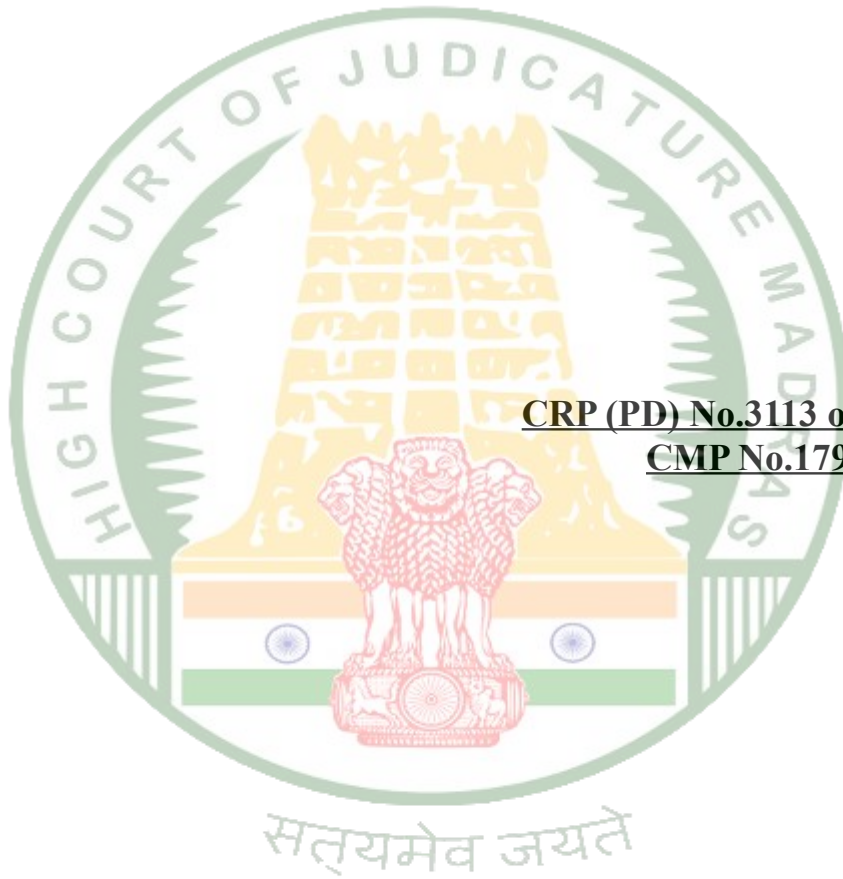
The V Additional District Judge, Coimbatore.

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