



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.01.2020

CORAM :

THE HONOURABLE MR.JUSTICE **R.SUBRAMANIAN**

WEB COPY

C.R.P(MD)No.2414 of 2011

and

M.P(MD)No.1 of 2011

1.K.Shanmugam
2.S.Sivanandam

... Plaintiffs/Respondents/Petitioners

Vs.

Periyasamy

... Defendant/Petitioner/Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India against the order dated 23.09.2011 in I.A.No.434 of 2011 in O.S.No.171 of 2008 on the file of Principal Subordinate Judge, Karur.

For Petitioners : Mr.K.Govindarajan
For Respondent : Mr.S.Gokul Raj

O R D E R

The plaintiffs in O.S.No.171 of 2008 have come up with this Civil Revision Petition challenging the order of the trial court allowing the application for leave to file an additional written statement in I.A.No.434 of 2011.

2. The plaintiffs filed the suit for partition contending that the suit properties belonged to Muthusamy, who died intestate about 12 years prior to the filing of the suit. The plaintiffs, who are the husband and son of one Malarkodi, who is grand-daughter of Muthusamy (pre-deceased daughter's daughter) claimed that they are entitled to half share in the suit properties as the legal heirs of Malarkodi.

3. The suit was resisted by the defendant contending that the suit properties are the ancestral properties of Muthusamy and as such, the defendant is entitled to half share by birth. The other half share would go to his mother, who had executed a release deed in his favour. It was the further claim that Malarkodi's mother got married about 45 years ago and therefore, she herself was ousted from enjoyment of the properties. It was also contended that the defendant is entitled to the suit properties by virtue of his open, continuous, exclusive, uninterrupted, hostile possession and enjoyment of the property.



4. The suit was taken up for trial. After evidence was completed and the suit was posted for arguments, the defendant came up with I.A.No.434 of 2011 seeking leave to file an additional written statement contending that the suit item No.4 was purchased by him from one Lakshmi Ammal under sale deed dated 25.09.1986. Therefore, the plaintiffs cannot claim title for the said item as it absolutely belonged to him.

5. The application for leave to file an additional written statement was opposed by the plaintiffs/petitioners herein contending that additional written statement, if allowed, would result in withdrawal of admission already made regarding the character of the suit properties. It was also contended that the prayer for filing of additional written statement is highly belated and the petition was filed after evidence is completed. The trial court found that the application is highly belated. The trial court however concluded that the application could be allowed on payment of costs. Accordingly, the trial court allowed the application on condition that the respondents herein shall pay a sum of Rs.2500/- as costs. The said order is now challenged by the plaintiffs.

6. I have heard Mr.K.Govindarajan, learned counsel appearing on behalf of the petitioners and Mr.Gokulraj, learned counsel appearing on behalf of the respondent.

7. Mr.K.Govindarajan, learned counsel appearing for the petitioners would draw my attention to the averments in the original written statement, which reads as follows:

4.The averments setout in paragraph 3 of the plaint is fairly correct.

5... It is submitted that the suit properties are the ancestral properties and this defendant is entitled to half share and his father Muthusamy is entitled to half share and after the demise of his father Muthusamy, this defendant has been in possession and enjoyment of the entire suit properties along with his mother Sellammal. Even if the said Malarkodi had any right, such right has been ousted by the long, uninterrupted and continuous possession and enjoyment by the plaintiff for over a statutory period with required animus to hold and enjoy the properties of his own".

Relying upon the above pleadings, the learned counsel appearing for the petitioners would contend that additional written statement takes diametrically opposite and destructive plea and hence the same cannot be allowed. He would also submit that having admitted the nature of the properties as ancestral properties of Muthusamy, the defendant cannot be allowed to introduce a claim on the basis of



8. Mr.K.Govindarajan, would also contend that the evidence in the suit was over and the suit was actually posted for arguments on the date when the application under Order 8 Rule 1 C.P.C seeking leave to file additional written statement was filed.

9. Contending contra, Mr.S.Gokul Raj, learned counsel for the respondent would submit that there is no positive admission regarding the nature of the properties in the original written statement by the defendant. He would also attempt to draw my attention to other portions of the written statement to convince me that additional written statement does not amount to withdrawal of an admission already made.

10. I have considered the rival submissions.

11. Order 8 Rule 9 C.P.C empowers the court to receive additional written statement or additional pleading at any stage of the proceedings. The said power, however, has to be exercised judicially depending on the facts and circumstances of each of the case. It is fundamental principle of law that a party to the proceedings cannot be allowed to withdraw admission made either in the pleadings or in the evidence.

12. As could be seen from the extract of the original written statement made supra, the defendant has actually come out with a plea that the suit properties are ancestral properties of Muthusamy and he is entitled to much larger share. He had also specifically pleaded ouster and adverse possession. However he now seeks to introduce a new plea stating that item No. 4 was purchased in the year 1986 by him and therefore, the same cannot form part of the estate of Muthusamy. This plea, in my considered opinion, would strike at the very root of the matter and undoubtedly amounts to withdrawal of admission of the character of the property in the original written statement that was filed by the defendant. It is also seen that the application was filed belatedly after evidence was closed and no reason has been assigned by the respondent/defendant in the suit for not filing the application earlier.

13. The trial court has categorically found that the application is belated and however, it thought it fit to allow the same by imposing costs. Mere payment of costs would not entail a party to the proceedings to withdraw admission made by him. The portion of the original written statement, extracted above, would categorically show that the respondent had, in fact, assented that the suit properties are ancestral properties of Muthusamy and he is entitled to half share as a son/coparcener. He now wants to withdraw the said statement and introduce a new plea that item No.4 was purchased by him out of his own funds. I do not think that the defendant can be allowed to do so. No doubt, the court has power to amend or receive additional written statement, but, the same cannot be allowed to go beyond reasonable limits to allow a party to withdraw



an admission made in the pleadings . Therefore, in my considered opinion, the court below was not right in allowing the application for leave to file additional written statement when additional written statement contains completely different plea regarding the nature and title of one of the items of the suit properties. I therefore find that the order of the trial court in allowing the application for leave to file additional written statement is materially irregular and is a result of improper exercise of jurisdiction vested in it under Order 8 Rule 1 C.P.C. Hence, the order of the trial court is liable to be set aside and accordingly, the same is set aside. The application in I.A.No.434 of 2011 in O.S.No.171 of 2008 on the file of the Principal Subordinate Court, Karur, will stand dismissed.

14. In the result, this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is allowed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

To

The Principal Subordinate Judge,
Karur.

+1 CC to M/s.K.GOVINDARAJAN, Advocate (SR-1590[F] dated 13/01/2020)

+1 CC to M/s.S.GOKULRAJ, Advocate (SR-1598[F] dated 13/01/2020)

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and M.P(MD)No.1 of 2011
10.01.2020

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