



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.09.2020

CORAM

THE HON'BLE MR.JUSTICE **S.S.SUNDAR**

C.R.P. (MD)No.2441 of 2015

and

M.P. (MD)No.1 of 2015

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Achammal @ Saroja Ammal : Petitioner/Petitioner/3rd Defendant

.. Vs ..

1.Saraswathi
2.Jeganathan (Died)
3.Rajalakshmi : Respondents/Respondents/Plaintiffs 1-3
4.Gengadevi
5.Gengaragavan
6.Mior Satheesh Kumar : Respondents

(Respondent No.6 represented by her mother and natural guardian the fourth respondent herein)

(Respondents 4 to 6 are brought on record as LR's of deceased 2nd respondent vide Court order dated 28.06.2019 made in C.M.P.(MD) No.6994 to 6996 of 2018 in C.R.P. (MD)No.2441 of 2015 by JNBJ)

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to call for the entire records on the file of the learned District Munsif, Srivaikundam in I.A.No.194 of 2015 in O.S.No.46 of 2012 dated 15.07.2015, to set aside the same.

For Petitioner : Mr.P.Pethurajesh
For Respondent 1 & 3 : Mr.D.Venkatesh
Respondent 2 : Died
For Respondents 4 - 6 : No appearance

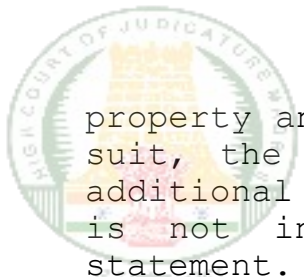
ORDER

This Civil Revision Petition is directed against the order passed in I.A.No.194 of 2015 in O.S.No.46 of 2012 on the file of the learned District Munsif, Srivaikundam.

2.Heard the learned Counsel appearing for the petitioner and the learned Counsel appearing for the respondents 1 and 3 and perused the materials available on record.

3.The brief facts that are necessary for the disposal of this Civil Revision Petition are as follows:

3.1.The revision petitioner is the third defendant in the suit in O.S.No.46 of 2012. The said suit was filed by the first respondent for partition and separate possession of the suit



property and for consequential reliefs. During the pendency of the suit, the revision petitioner filed an application to accept the additional written statement raising a plea which according to him is not in derogation but supplement to the original written statement. The said application was dismissed on the ground that the case of the third defendant in the original written statement is different from the case that is now pleaded in the additional written statement. In short, the lower Court was of the view that the party to the lis cannot file additional written statement to amend the written statement with different pleadings. Challenging the said order, the third defendant has preferred the above Civil Revision Petition.

4.The plaintiffs filed a suit for partition of their half share in the suit property measuring an extent of 1 Acre and 15 cents. It is stated in the plaint that the suit property was purchased by the grand father of plaintiffs and defendants by name Perumal Naicker on 07.06.1899 and that the said property devolved on the two sons of Perumal Naicker by name Ramasamy Naicker and Seeni Naicker. It is their further case that after the death of Seeni Naicker, the plaintiffs are entitled to the half share as legal heirs of Seeni Naicker. The suit was contested by the defendants on the ground that the suit property along with other properties of Perumal Naicker were divided among his two sons and the suit property was allotted to Ramasamy Naicker as he had purchased the remaining property in the same survey number. It was further pleaded that separate patta was issued to Ramasamy Naicker and that defendants 1 and 2, the two sons of Ramasamy Naicker sold the property on 23.02.1995 in favour of 3rd defendant. The third defendant purchaser in the written statement admitted a mortgage created by both brothers in 1973. In the additional written statement, it was clarified that the oral partition was in the year 1970 and that the mortgage dated 15.11.1973 in respect of the suit property was only by Ramasamy Naicker and that the said fact was known to third defendant only on 04.12.2014 when he got a reply to his petition filed under Right To Information Act.

5.After going through the entire papers, this Court is not able to sustain the order of the lower Court dismissing the petition filed by the revision petitioner/3rd defendant for receiving additional written statement. The revision petitioner did not admit the case of the plaintiff in the original written statement. The additional written statement contained some facts which are in partial modification of fact based on the particulars of the mortgage gathered subsequently from the records. This need not be treated as a counter claim as projected before the lower Court for dismissing the petition. The defendant is entitled to take inconsistent plea. The petitioner states that the plea in additional written statement is as per the document or information furnished by Bank. May be a different stand was taken in the statement. In the present case, the plaintiff has



come forward with a relief of partition and the defendants have pleaded a oral partition. The further pleadings as per the additional written statement is only to explain the stand taken in the original written statement or to supplement the pleading originally raised by the defendant in the written statement. In the said circumstances, this Court is of the view that the order of the learned District Munsif, Srivaikundam, is enormous and unsustainable. Accordingly, this Civil Revision Petition is allowed and the application in I.A.No.194 of 2015 stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

SRM

To

The District Munsif,
Srivaikundam.

+1 CC to M/s.P. PETHU RAJESH, Advocate (SR-17634[F] dated 21/09/2020)

C.R.P. (MD)No.2441 of 2015
21.09.2020

SE (CO)

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