



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.02.2020

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (PD) (MD) No.1127 of 2018

and

C.M.P. (MD) No.4825 of 2018

A.Jakaria .. Petitioner /Petitioners/3rd Defendant

Vs.

1.Ummasalima
2.Ibrahim Ali
3.Palkees Beevi
4.Bugardeen
5.Nainar
6.Abbas Ali

.. Respondents 2 to 6/ Respondents 2 to 6/
Defendants 1,2,4 to 6

Prayer: This Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order passed in I.A.No.113 of 2017 in O.S.No.84 of 2011 dated 14.03.2018 on the file of the Additional District Munsif cum Judicial Magistrate Court, Manamadurai.

For Petitioner

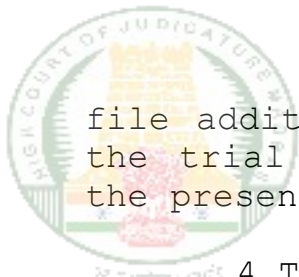
: Mr.H.Arumugam

ORDER

Heard the learned counsel appearing for the petitioner.

2.This Civil Revision Petition has been filed against the order passed in I.A.No.113 of 2017 in O.S.No.84 of 2011 dated 14.03.2018, on the file of the learned Additional District Munsif cum Judicial Magistrate, Manamadurai.

3.The petitioner herein is the third defendant, the first respondent herein is the plaintiff and the respondents 2 to 6 herein are the defendants 1, 2, 4 to 6 in the suit. The first respondent herein has filed a suit in O.S.No.84 of 2011 for a prayer of partition and for declaring a sale deed dated 21.02.2011, as null and void. In that suit, the petitioner herein has filed an application in I.A.No.113 of 2017 for permission to



file additional written statement. That petition was dismissed by the trial Court. Against which, the petitioner herein has filed the present petition.

4.The brief substance in I.A.No.113 of 2017 is as follows:

The evidence was let in by the first defendant. The suit was pending for the evidence of the third defendant. The first defendant purchased A schedule property and third item of B schedule property. When the petitioner tried to transfer the patta in his name, he came to know that the Survey No.216/2 with a total extent of 98 cents was sub divided as 216/2A with an extent of 49 cents and the patta was in the name of the first defendant and patta for Survey No.216/2B with an extent of 49 cents was in the name of plaintiff and A schedule second item, survey No.216/5 was in the name of the first defendant. Survey No.216/3 in the re-survey was altered and now new survey Number is 216/5. These facts was not known to the petitioner at the time of filing of the written statement. Though the plaintiff and the defendants 1 and 2 are aware that Survey No.216/5 and 216/3 are different properties, they concealed these facts in the plaint and in the written statement. Survey No.216/3 was sub divided into survey Nos.216/3A and 216/3B. The plaintiff and the defendants 1 and 2 were claiming that survey No.216/3 is renumbered as No.216/5 in the re-survey and the petitioner is to be permitted to file additional written statement.

5.The brief substance of counter filed by the first defendant in I.A.No.113 of 2017 is as follows:

Already the petitioner filed written statement in the suit. Prior to trial on 04.09.2013, the petitioner has not taken any steps to file additional written statement. Only at the stage of evidence, the defendants are trying to introduce a new case without filing another suit. The petitioner is trying to drag on the case, which is at the stage of completion of trial. The first defendant and third defendant colluded together and the third defendant did not cross examine the first defendant properly. The petitioner has not filed any document along with petition. The petitioner has not narrated how he purchased the property without perusing the documents.

6.The counter filed by the second defendant in I.A.No.113 of 2017 is as follows:

Survey No.216/2 with a total extent of 98 cents was sub divided into survey No.216/2A and survey No.216/2B. The patta No.840 was issued in the name of the first defendant. For survey No.216/2A and survey No.216/2B with an extent of 49 cents, patta No.614 was issued in the name of the plaintiff. A schedule second item of suit property in survey No.216/5 was in the name of the first defendant, in patta no.840 and all these particulars were



already known to the third defendant. It is wrong to state that the plaintiff and the defendants 1 and 2 wantedly concealed the facts that survey Nos.216/3 and 216/5 are different properties and only with a motive to drag on the case, the petitioner has filed this petition.

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7.The counter filed by the third defendant in I.A.No.113 of 2017 is as follows:

After the issues were framed, after the plaintiff and defendants 1 and 2 side evidence was over, only when the case was posted for the evidence of third defendant, this petition is filed with an ulterior motive. When the vendor himself is not having any right over the entire common property, subsequent purchaser cannot get any right over the entire common properties.

8.The trial Court after considering both sides, dismissed the petition. Against which, the petitioner has filed this revision petition.

9.On the side of the revision petitioner, it is stated that the plaintiff claimed the property through an oral partition. Survey No.216/2 with an extent of 98 cents was sub divided into survey Nos.216/2A and 216/2B. The plaintiff sold survey No.216/2A, but, did not mention the same in the plaint. According to the plaintiff, survey No.216/3 was altered into survey No.216/5 whereas both the survey numbers are different. The land in survey No.216/3 was sub divided into survey Nos.216/3A and 216/3B and they are available separately. These facts were not brought to the knowledge of the petitioner. The plaintiff and the defendants 1 and 2 are brothers and the prayer in the plaint is to declare the sale deed in favour of the third defendant as null and void and the nature of case will not be changed and there will not be any change in the cause of action.

10.On the side of the petitioner, it is stated that the petitioner is a bonafide purchaser and he is not aware of the family matters of the plaintiff. The plaintiff failed to file document to show survey Nos.216/3 and 216/5 are different properties. Survey No.216/3 was altered into Survey No.216/5. Whereas the survey No.216/3 is sub divided into survey Nos.216/3A and 216/3B. Those lands are available separately.

11.On the side of the petitioner, it is stated that the vendor is colluding with the plaintiff and the right of the bonafide purchaser is prejudiced.

12.The learned counsel for the petitioner would rely upon the judgment passed by this Court in the case of **Muthuraman v. Muthukumanan** reported in **2007 (5) CTC 722**, wherein it is stated as



follows:

"The object of filing of additional written statement is to supply what might have been omitted in the written statement filed earlier and the additional written statement can be allowed, if it is not likely to cause prejudice to the plaintiff. The Court should grant permission to the defendant for filing subsequent pleadings, if they are so relevant to prove facts placed before the Court by the defendant, which cause no prejudice to the plaintiff even in the absence of any claim or set off or counter claim.... by filing an additional written statement to supplement the pleadings, no prejudice would be caused to the plaintiff and therefore, the lower Court ought not to have dismissed the petition on the ground of delay."

13. The learned counsel for the petitioner would rely upon the judgment passed by this Court in the case of **V.R. Sundararajan v. D. Neelaveni** reported in **2017 (1) MWN (Civil) 694**, wherein it is stated as follows:

"Trial commenced and two witnesses were examined - defendant filed application to receive additional written statement - trial Court dismissed application - revision filed - though there is a long delay in filing additional written statement, same can be allowed by payment of cost of plaintiff - revision allowed on condition that defendant pays cost to plaintiff within a week - trial Court directed to dispose of suit within two months."

14. The learned counsel for the petitioner would rely upon the judgment passed by this Court in the case of **Subramanian and three others v. Jayaraman** reported in **1999 (III) CTC 52**, wherein it is stated as follows:

"It is not the intention of the legislature that no pleading subsequent to the written statement should be allowed other than for reasons given therein. But the intention is that without the leave of the Court, no pleading subsequent to the written statement shall be presented."

In the present case, moreover, the seriously objected portion of the additional written statement being the plea of *res judicata* and *estoppel*, both of which are quite legal, it is not reasonable to deny the petitioners from resorting to such legal question, for the defendants in their considered



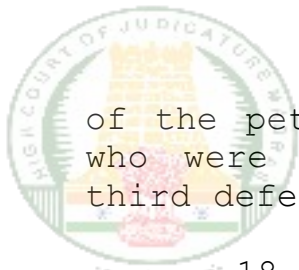
the written statement strongly feel that they could have recourse to such legal aspects. At the best, in the above circumstances, what the lower Court could have done is that it could have allowed the application of the petitioners/defendants on such terms as contemplated by the Rule since certain amount of hardship and inconvenience have been cause to the respondent/plaintiff."

15.The learned counsel for the petitioner would rely upon the judgment passed by the Hon'ble Supreme Court in the case of **Olympic Industries v. Mulla Hussainy Bhai Mulla Akberally and others** reported in **(2009) MLJ 1081 (SC)**, wherein it is stated as follows:

"A plain reading of the impugned order of the High Court would show that two grounds were given by the High Court to reject the application for acceptance of the additional counter statement filed by the appellant. The first ground was that the appellant had filed a belated application for acceptance of an additional counter statement when examination of P.W.1 was already over. So far as this ground is concerned, we do not find that delay is a ground for which the additional counter statement could not be allowed, as it is well settled that mere delay is not sufficient to refuse to allow amendment of pleadings or filings of additional counter statement. At the same time, delay is no ground for dismissal of an application under Order 8 Rule 9 of the Code of Civil Procedure where no prejudice was caused to the party opposing such amendment or acceptance of additional counter statement which could easily be compensated by cost."

16.On the side of the respondents, it is stated that both survey Nos.216/3 and 216/5 are same and they are not different lands. There is no pleadings in the written statement. The entire case proceeded, as if both the survey numbers are the same. Now the third defendant created a new case by claiming both the survey numbers are not the same and allowing the petition will cause fresh trial and prayed the petition to be dismissed. In support of his contention, the judgment passed by this Court in the case of **K.Ramar and another v. Panchali Ammal and others** reported in **2015 (3) MWN (Civil) 227** is cited.

17.It is seen that the plaintiff filed a suit to declare the sale deed in favour of the third defendant as null and void. It is upon the plaintiff to prove the case. The allegation



of the petitioner is that the first defendant and the plaintiff, who were brothers, colluded together against the right of the third defendant.

18. In the above circumstances, an opportunity for the petitioner to put forth his case has to be given in the interest of justice. Mere delay cannot be a reason for preventing the third defendant to put forth his case. Hence, this Civil Revision Petition is allowed and the order passed in I.A.No.113 of 2017 in O.S.No.84 of 2011 dated 14.03.2018, on the file of the learned Additional District Munsif cum Judicial Magistrate, Manamadurai is set aside. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (P&A)

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/ /2020

Sub Assistant Registrar(CS)

MRN

To

The Additional District Munsif cum Judicial Magistrate,
Manamadurai.

+1 CC to MR.P.SENTHUR PANDIAN, Advocate (SR-4989[F] dated 06/02/2020)

+1 CC to MR.H.ARUMUGAM, Advocate (SR-5059[F] dated 06/02/2020)

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