



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.07.2020

CORAM

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

C.R.P (PD) (MD)Nos.2497 and 2498 of 2018

and

C.M.P. (MD)Nos.11030 and 11031 of 2018

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C.R.P. (PD) (MD)No.2497 of 2018

Gurusamy : Petitioner/Respondent/Plaintiff

.. Vs ..

1.Government of Tamil Nadu
Represented by its
District Collector,
Tuticorin,
Tuticoirn District.

2.The Tahsildar,
Tahsildar Office,
Kovilpatti,
Tuticorin District.

: Respondents/Petitioners/
1 and 2 Defendants

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order passed in I.A.No.123 of 2018 in O.S.No.297 of 2009 on the file of District Munsif Court, Kovilpatti by allowing this Civil Revision Petition.

C.R.P. (PD) (MD)No.2498 of 2018

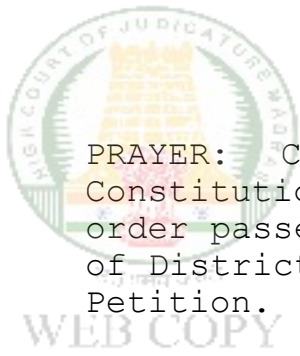
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For Petitioner : Mr.V.Meenakshisundaram
(in both cases)
For Respondents : Mr.J.Gunaseelan Muthiah
Additional Government Pleader
(in both cases)

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COMMON ORDER

The Civil Revision Petition in C.R.P.(MD)No.2497 of 2018 is directed against the order in interlocutory application in I.A.No.123 of 2018 in O.S.No.297 of 2009 and Civil Revision Petition in C.R.P.(MD)No.2498 of 2018 is directed against the order in I.A.No.124 of 2018.

2.The brief facts that are necessary for the disposal of these two Civil Revision Petitions are are follows:

2.1.The revision petitioner, as plaintiff, filed a suit in O.S.No.297 of 2009 on the file of the District Munsif Court, Kovilpatti, for declaration of title in favour of the plaintiff and defendants 3 to 7 and for consequential injunction restraining the defendants 1 and 2 from interfering with their peaceful possession and enjoyment of the suit property. The dispute is with regard to the character of the suit property and possession. The Government is the first defendant and the second defendant is the Tahsildar of the concerned Taluk, namely, Kovilpatti. The second defendant filed a written statement which is signed on 13.08.2013 admitting the possession of the plaintiff and his men. After commencement of trial, the defendants 1 and 2 filed an application in I.A.Nos.123 of 2018 to amend the written statement taking away the portion of the pleading wherein the petitioner's possession was admitted. Similarly, I.A.No.124 of 2018 was filed to receive additional written statement. It is to be seen that in the additional written statement, the defendants 1 and 2 have stated that by mistake the original written statement was filed. The admission of plaintiff's possession according to defendants 1 and 2 was by mistake and inadvertence. Circumstances was also explained in the additional written statement. The lower Court allowed both the applications simply accepting the explanation offered by defendants 1 and 2 in their affidavit filed in support of the respective interlocutory applications. Challenging the order of the trial Court allowing the applications in I.A.No.123 and 124 of 2018 the above Civil Revision Petitions have been preferred by the plaintiff.



3.The learned Counsel appearing for the revision petitioner submitted that the amendment of pleading after commencement of trial cannot be allowed as a matter of routine and it is not open to the defendants to withdraw the admission they have recorded in the original written statement. The learned Counsel appearing for the revision petitioner further pointed out the relevant portions in which the statement of second defendant is without ambiguity with regard to the admission of plaintiff's possession and enjoyment of the suit property. The learned Counsel appearing for the petitioner further pointed out that these applications for amendment and to receive the additional written statement were filed belatedly at the stage when the matter was posted for defendants' side argument.

4.The learned Additional Government Pleader on the other hand supported the order of lower Court on the ground that the statement made in the written statement filed by the second defendant was by mistake and due to inadvertence and that therefore, an opportunity should be given to the parties to correct the mistake committed by the Advocate before the trial Court. It is open to the parties to the suit to amend the pleading at any stage. However, Order 6, Rule 17 C.P.C., cannot be invoked without considering the consequences which may follow and the prejudice that is likely to be caused to the other side by way of such amendment. It is also settled that a party to the pleading cannot be permitted to withdraw a statement of admission merely because at a later point of time he found that the statement was by mistake. However, if a mistake or error had occasioned, it is open to the party to the pleading to file an additional pleading or additional written statement explaining how the mistake had occurred at the time of drafting the original pleading. It is true that the Court will be too liberal in allowing the amendment before the commencement of trial. In this case, after the trial and when the matter was posted for arguments, the petitions have been filed by the defendants 1 and 2 to amend the written statement. An amendment of this nature, if permitted to be made after the trial, that will cause serious prejudice to the other side, particularly, the plaintiff in this case. However, additional written statement explaining the so-called mistake can be permitted in the interest of justice so that the trial Court will be in a position to consider whether the admission earlier made in the original written statement was by mistake or inadvertence subject to other limitations. Hence, this Court is of the view that the order made in I.A.No.123 of 2018 to amend the written statement is impermissible and I.A.No.124 of 2018 to receive the additional written statement can be allowed.

5.As a result, the Civil Revision Petition in C.R.P.(MD)No.2497 of 2018 is allowed and the order of the learned District Munsif Court, Kovilpatti, in I.A.No.123 of 2018 to amend the written statement is set aside. I.A.No.123 of 2018 stands dismissed. I.A.No.124 of 2018 is dismissed and I.A.No.124 of 2018 in



O.S.No.297 of 2009 stands allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

SRM

To

The District Munsif Court,
Kovilpatti.

Copy to

The Section Officer, VR Section,
Madurai Bench of Madras High Court, Madurai (2 copies)

+1 CC to MR.D.NALLATHAMBI, Advocate (SR-13231[F] dated 24/07/2020)

C.R.P(PD)(MD)Nos.2497 and 2498 of 2018

23.07.2020

VB (07.08.2020) 4P 5C