



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Reserved On : 24.01.2020
Delivered On : 20.05.2020
CORAM

WEB COPY

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P.(MD)No.2022 of 2019

Ananthi Rajendran .. Petitioner/Defendant

Vs.

M.S.Bharathi Pandian .. Respondent/Plaintiff

Prayer: This Civil revision petition is filed under Article 227 of the Constitution of India, to set aside the order dated 17.10.2019 passed in I.A.No.689 of 2019 in O.S.No.159 of 2014 on the file of the learned IVth Additional District Judge, Madurai.

For Petitioner	: Mr.T.Lajapathi Roy
For Respondent	: Mr.T.R.Subramanian

ORDER

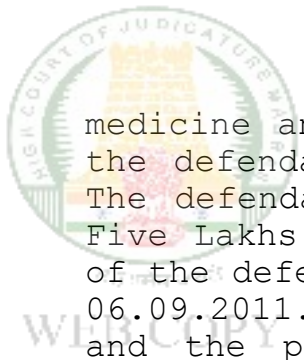
Heard learned counsel appearing on either side.

2.This Civil Revision Petition has been filed against the order passed in I.A.No.689 of 2019 in O.S.No.159 of 2014 dated 17.10.2019, on the file of the learned IVth Additional District Judge, Madurai.

3.The petitioner herein is the defendant and the respondent herein is the plaintiff in the suit. The respondent herein has filed a suit in O.S.No.159 of 2014 for a prayer of specific performance and for injunction. In that suit, the petitioner herein has filed an application in I.A.No.689 of 2019 for permission to file an additional written statement. The petition was dismissed by the trial Court. Against which, the petitioner has filed this revision petition.

4.Brief substance of the application in I.A.No.689 of 2019 is as follows:

The petitioner filed a written statement but certain points are left out to be mentioned in the written statement. The defendant never intended to sell the property. The plaintiff is not known to the defendant. The grandchildren of the defendant were doing

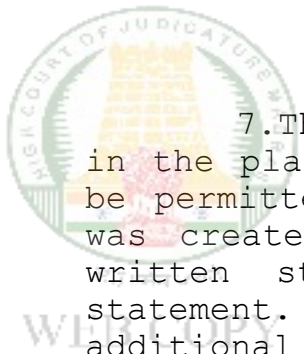


medicine and to meet out the educational expenses, the daughter of the defendant was constrained to borrow loan from various persons. The defendant's son-in-law borrowed a sum of Rs.5,00,000/- (Rupees Five Lakhs only) from the plaintiff. For that loan, the son-in-law of the defendant executed a power deed in favour of the plaintiff on 06.09.2011. The son-in-law of the defendant repaid the entire amount and the power deed executed in the name of the plaintiff was cancelled. Subsequently the daughter and son-in-law of the defendant proposed to get loan of Rs.10,00,000/- (Rupees Ten Lakhs only) from the plaintiff and as a security for the loan, a sale agreement was executed by the defendant's son-in-law and the daughter of the defendant in favour of the plaintiff. Though the property was worth about Rs.30,00,000/- (Rupees Thirty Lakhs only), the sale consideration was fixed only as Rs.16,40,000/- (Rupees Sixteen Lakhs and Forty Thousand only). But no amount was received by the defendant from the plaintiff. The defendant is a retired Head of the Department in the Government Polytechnic, Madurai and he is receiving pension. There is no necessity for the defendant to sell the property. Only with a motive to grab the property from the defendant, the plaintiff has filed the suit. The defendant has lodged a complaint against the plaintiff in Crime No.9 of 2015. Some of this facts were left out in the written statement. Hence, an additional written statement is to be filed and permission to file a written statement has to be granted.

5. Brief substance of the counter in I.A.No.689 of 2019 is as follows:

The sale agreement was executed between the defendant and the plaintiff on 17.09.2012 and the sale consideration was fixed Rs.16,40,000/- (Rupees Sixteen Lakhs and Forty Thousand only). A sum of Rs.4,00,000/- (Rupees Four Lakhs only) was given as an advance. Again on 13.10.2012, another sum of Rs.6,00,000/- (Rupees Six Lakhs only) was given to the defendant. When the suit for specific performance was filed, the defendant accepted all this facts in his written statement. Only with a motive to drag on the case, he is trying to divert the Court and is mentioning some thing regarding the power deed relating to Thirumangalam property, which is unnecessary for this suit. Already exparte decree was passed and an execution petition is pending. When the delay excuse petition was dismissed by the trial Court, the petitioner has approached this Court and as per the order of this Court, the suit was again taken up for trial. The plaintiff was examined as a witness on 02.07.2019 and at this stage, the petitioner was not entitled to create a new case by filing an additional written statement and the petition is to be dismissed.

6. The trial Court after considering both sides, dismissed the petition. Against which, the petitioner has come forward with this revision petition.



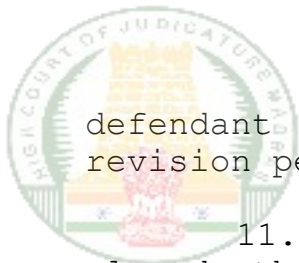
7.The case of the revision petitioner is that all allegations in the plaint are to be specifically denial. The petitioner should be permitted to file an additional written statement. No new plea was created. Only the facts, which were left unmentioned in the written statement was incorporated in the additional written statement. No prejudice will be caused to the other side. If the additional written statement is not accepted, the real controversy between the parties could not be decided and prayed the impugned order is to be set aside.

8.On the side of the revision petitioner, it is stated that the sale agreement was executed only as a collateral security. There was no agreement to sell the property. No sale consideration was passed. The defendant executed a settlement deed in favour of his daughter. As the property is worth more than Rs.30,00,000/- (Rupees Thirty Lakhs only), there is no change for a sale agreement for a sale price of Rs.6,40,000/- (Rupees Six Lakhs and Forty Thousand only). A false complaint was given by the defendant before the Police against the daughter and son-in-law and subsequently, that complaint was dropped as 'mistake of fact'.

9.The learned counsel for the revision 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 & Ors.** Reported in **2009 (7) MLJ 1081**, wherein it is stated as follows:

"In our view, even by filing an amendment or additional counter statement, it is open to the appellant to add a new ground of defence or substituting or altering the defence or even taking inconsistent pleas in the counter statement as long as the pleadings do not result in causing grave injustice and irretrievable prejudice to plaintiff or displacing him completely. (See : Usha Balasaheb Swami & Ors. vs. Kiran Appaso Swami & Ors. (2007) 5 SCC 602). Therefore, we are unable to agree with the High Court on his ground as well. It is also well settled that the Courts should be more generous in allowing the amendment of the counter statement of the defendant than in the case of plaint."

10.On the side of the respondent, it is stated that the suit is for specific performance and a sum of Rs.4,00,000/- (Rupees Four Lakhs only) was paid as advance and another sum of Rs.6,00,000/- (Rupees Six Lakhs only) was paid as an additional advance. There was an endorsement on the back side of the sale agreement and the remaining amount was deposited in the Court. The total extent of the property is 1640 square feet vacant land. The consideration was proper and sufficient at the time of execution of the agreement in the year 2012. Already P.W.1 was examined in chief and that the



defendant failed to cross examine the petitioner and prayed the revision petition to be dismissed.

11. On the side of the respondent, it is further stated that already the petition to set aside ex parte decree was allowed only on payment of cost of Rs.25,000/- (Rupees Twenty Thousand only) and that the revision petitioner is a practicing advocate.

12. The learned counsel for the respondent relied upon a judgment passed by this Court in the case **Valli and other v. Kandasamy** reported in **2018 (2) MWN (Civil) 78**, wherein it is stated as follows:

"Further, the petitioners have filed additional written statement raising various new pleas. The petitioners have not stated any reason for not taking these pleas in the written statement. The contention of the petitioners that due to their illiteracy, they could not properly instruct their counsel is not a valid reason for permission to file additional written statement."

13. The learned counsel for the respondent relied upon the judgment passed by this Court in the case **Faridha Begum v. U.M.K. Batcha** reported in **2017 (2) MWN 132**, wherein it is stated as follows:

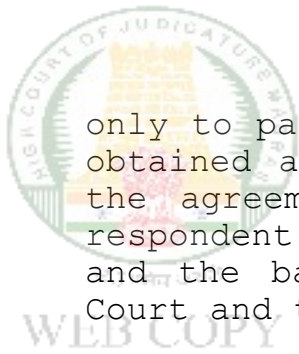
"Order 8, Rule 6-A & 9, CPC read together indicates that it is not the prerogative of the defendant to file statements in piecemeal at any point of time. It is the bounden duty of the defendant to place on record that the subsequent pleading is warranted due to certain events occurred pending suit. In this case, no such events been placed before this Court. The pendency of the Rent Control proceedings, rent paid by the tenants are all known to the defendant even at the time of filing the written statement in the year 2010. The plea of counter-claim by way of additional written statement belatedly after commencement of trial is restricted under C.P.C."

14. The learned counsel for the respondent relied upon the following judgments passed by this Court:

(i) in the case of **K. Sheela Rani v. Nayagam and others** in **C.R.P. (PD) No. 214 of 2014**.

(ii) in the case of **C. Elumalai and others v. A.G.L. Irudhayaraj and others** in **C.R.P. (PD) Nos. 537 and 600 of 2017**.

15. On the side of the revision petitioner, it is stated that



only to pay the medical college fees for his grandchild, a loan was obtained and there was no necessity to sell the property and that the agreement was executed only as a security. The case of the respondent is that part of the sale consideration was already paid and the balance consideration was already deposited in the trial Court and that a relief of specific performance has to be given.

16. Whether the particulars stated in the additional written statement are necessary for deciding the matter in issue has to be decided after the completion of the trial. One more opportunity for the defendant to put forth his case has to be given in the interest of justice. The plaintiff is at liberty to file a reply statement.

17. In the above circumstances, this Civil Revision Petition is allowed and the order passed in I.A.No.689 of 2019 in O.S.No.159 of 2014 dated 17.10.2019, on the file of the learned IVth Additional District Judge, Madurai is set aside. No Costs.

Sd/-

Assistant Registrar (CS II)

// True Copy //

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Sub Assistant Registrar(CS)

MRN

Note : With the consent of both side counsels, this order is pronounced in the open Court through video conference system on 20.05.2020.

To

The IV Additional District Judge, Madurai.

Copy to: The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.(2 Copies)

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