

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.07.2021

CORAM

THE HON'BLE Mr. JUSTICE V.SIVAGNANAM

C.R.P.(PD) No.1731 of 2016

Rajalakshmi Petitioner
Vs.
Maruthamuthu ... Respondent

Prayer :- Civil Revision Petition is filed under Article 227 of the Constitution of India as against the fair and decretal order made in I.A.No.233 of 2015 in O.S.No.162 of 2012 on the file of Additional Sub-Court, Virudhachalam dated 21.11.2015.

For Petitioner : Ms.R.Sripriya
for Mr.V.Raghavachari
For Respondent : Mr.T.Sezhian
for Ms.R.Meenal

ORDER

This Civil Revision Petition is filed as against the fair and decretal order made in I.A.No.233 of 2015 in O.S.No.162 of 2012 on the file of Additional Sub-Court, Virudhachalam dated 21.11.2015.

2.The revision petitioner is the 2nd defendant in the suit. The respondent/plaintiff filed the suit for specific performance of an agreement dated 19.08.2011, with regard to suit schedule property.

3.Defendants 1 and 2 are sisters. The suit schedule property belongs to them. They entered into an agreement with the plaintiff for a sale consideration of Rs.1,50,000/- and received a sum of Rs.1,00,000/- on the date of agreement. For payment of balance amount Rs.50,000/- one year time has been granted to the respondent. Meanwhile the respondent arranged the remaining amount to pay the same to the petitioner. However, the petitioner did not come forward to execute the sale agreement. Hence the respondent filed the suit in O.S.No.162 of 2012 as against the petitioner and her sister.

4.On the side of the plaintiff two witnesses, P.Ws.1 and 2 were examined; 4 documents, Ex.A1 to A4 were marked and the evidence was closed on 08.11.2013. On the side of the defendants two witnesses, D.Ws.1 and 2 were examined; 2 documents D.Ws.1 and 2 were marked marked. On 09.12.2013 both side evidences were closed and the suit was posted for arguments.

5.Subsequently, the defendants filed two petitions in I.A.Nos.5 and 6 of 2014 to reopen and recall the P.W.1. The said petitions were allowed on terms and posted for cross examination of P.W.1. However, the defendants did not take any steps to cross examine the P.W.1. Hence the Court below closed the P.W.1's cross examination and the case was once again posted for arguments.

6.Thereafter, since the learned counsel for the defendants reported no instructions, notice has been ordered to the defendants. On 15.07.2014, 1st defendant alone appeared before the Court below and the 2nd defendant/petitioner did not appear. Consequently, the 2nd defendant was set as exparte on 15.07.2014.

7.Therefore, as against the exparte order, the 2nd defendant/petitioner filed a petition under Order VIII Rule 9 CPC and the same has been allowed on 20.04.2015. Again the 2nd defendant/petitioner filed a petition under Order VIII Rule 9 CPC in I.A.No.233 of 2015 with a different set of plea to receive the additional written statement.

8.After hearing both side arguments, the learned trial Judge dismissed the petition on the ground that the petition has been filed

belatedly and it will force to file a reply statement and as a consequence, different issues will have to be framed and the trial will have to begin once again.

9. Aggrieved against the order dated 21.11.2015 in I.A.No.233 of 2015, the 2nd defendant/petitioner is before this Court.

10. The learned counsel for the petitioner/2nd defendant would submit that the 1st defendant colluding with the respondent/plaintiff and acted prejudice to the interest of the 2nd defendant. Therefore, she decided to take up the case separately and filed the petition in I.A.No.233 of 2015 to receive additional written statement.

11. The learned counsel for the respondent supported the order of the trial Court and further contended that the petitioner raised a new plea in the additional written statement, which is not originally stated in the 1st written statement filed by the 1st defendant and the 1st written statement was adopted by the 2nd defendant also. Therefore, the trial Court has rightly disallowed the petition to receive additional written statement. Thus there is no ground to interfere with the order of the trial Court and pleaded to dismiss this Civil Revision Petition.

12.Heard the learned counsel appearing for the parties and perused the materials on record.

13.Admitted fact of the case is that the plaintiff filed the suit for specific performance for the plaint schedule property, based on the sale agreement dated 19.08.2011, executed by the defendants in favour of the plaintiff/respondent, for a total sale consideration of Rs.1,50,000/-. It is further contended that they had received a sum of Rs.1,00,000/- on the date of agreement itself.

14.Initially, defendants engaged same counsel to defend their case and also filed written statement. The said written statement was adopted by the 2nd defendant also. During the course of trial, the learned counsel appearing for the defendants reported no instructions. Hence notice was ordered to the defendants, thereby the 1st defendant alone appeared before the trial Court and 2nd defendant become absent. Therefore, the 2nd defendant was set exparte. Thereafter, she filed a petition to set aside the exparte order and the same was allowed. Further, the 2nd defendant/petitioner filed another petition under Order VIII Rule 9 CPC in I.A.No.233 of 2015 to receive the additional written statement on the

ground that the 1st defendant colluding with the plaintiff/respondent and acted prejudice to the interest of the 2nd defendant/petitioner. However, the trial Court dismissed the said petition on 21.11.2015.

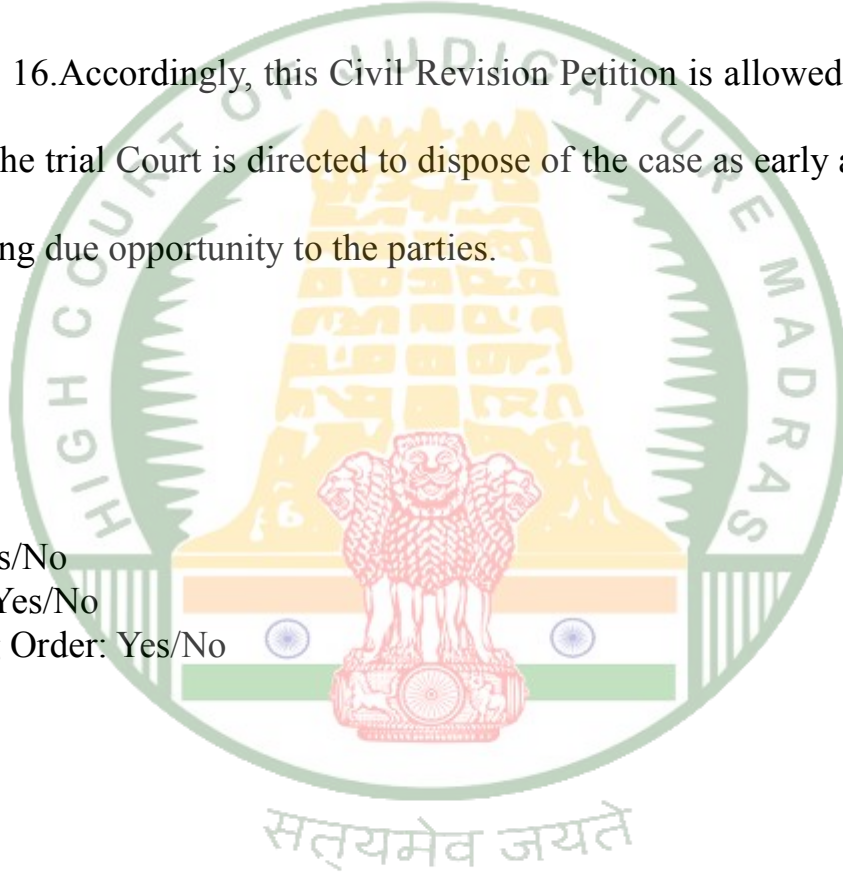
15.The provision under Order VIII Rule 9 of the Code of CPC is directory. Under what circumstances leave is to be granted and how the discretion is to be exercised depend on the facts and circumstances of each case. In this case, the counsel appearing for the defendants reported no instructions, on the notice issued by the trial Court, 1st defendant appeared before the trial Court and the 2nd defendant/petitioner did not appear. Therefore, she was set as *ex parte*. It is contended by the 2nd defendant that the 1st defendant colluding with the respondent/plaintiff and acted prejudicial to the interest of the 2nd defendant. Under these circumstances, she want to file additional written statement to contest the case effectively. Generally a new plea which is not covered in original written statement or an inconsistent plea against the original written statement can be included in additional plea. When one defendant acted prejudicial to the another defendant, additional written statement should be permitted to be filed on terms, in the interest of justice, to enable a final adjudication to be made on

the dispute and to avoid multiplicity of suits. Hence, this Court set aside the order of the trial Court dated 21.11.2015 in I.A.No.233 of 2015 in O.S.No.162 of 2012 and the 2nd defendant is permitted to file additional written statement.

16.Accordingly, this Civil Revision Petition is allowed. No Costs. Further, the trial Court is directed to dispose of the case as early as possible, after giving due opportunity to the parties.

01.07.2021

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Index: Yes/No
Internet: Yes/No
Speaking Order: Yes/No



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V.SIVAGNANAM,J.

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