

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2021

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CRP(PD).Nos. 3161 and 3244 of 2016

and

C.M.P.No. 16046 of 2016

CRP(PD).No. 3161 of 2016

P. Narayanasuvami

... Petitioner

Vs.

1. Rahmathullah Basha

2. Park Town Benefit Fund Ltd.,
No.223, Minst Street,
Chennai - 600 003.

3. V.Samannan

4. Ganesh

5. P. Navaneetham

6. P. Balamurugan

7. P. Hariharan

8. P. Kannan

9. P. Sasikumar

... Respondents

PRYAER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 09.09.2016 passed in I.A.No.8571 of 2016 in O.S.No. 9005 of 2010 on the file of III Additional Judge, City Civil Court, Chennai.

For Petitioner : No Appearance

For Respondents : Mr.A.Abdul Kader (for R1)
: Given up (for R2, R3 and R5 to R9)
: Not ready (for R4)

CRP(PD).No. 3244 of 2016

P. Narayanasuvami

... Petitioner

Vs.

1. Rahmathullah Basha

2. Park Town Benefit Fund Ltd.,
No.223, Minst Street,
Chennai - 600 003.

3. V.Samannan

4. Ganesh

5. P. Navaneetham

6. P. Balamurugan

7. P. Hariharan

8. P. Kannan

9. P. Sasikumar

... Respondents

PRYAER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 09.09.2016 passed in I.A.No.8481 of 2016 in O.S.No. 9005 of 2010 on the file of III Additional Judge, City Civil Court, Chennai.

For Petitioner : No Appearance

For Respondents : Mr.A.Abdul Kader (for R1)
: Given up (for R2 to R9)

COMMON ORDER

These Civil Revision Petitions are filed against the fair and decretal order passed in I.A.Nos. 8571 and 8481 of 2016 in O.S.No. 9005 of 2010 dated 09.09.2016 on the file of the learned III Additional Judge, City Civil Court, Chennai.

2. In both the Civil Revision Petitions, the petitioner is the ninth defendant in the suit filed by the first respondent herein for recovery of possession and damages, in respect of the suit property. The defendants filed a written statement in the year 2013 itself. After closing the evidence of plaintiffs and after examining D.W.1 when the matter was posted for further evidence of defendants, the petitioner filed a petition to re-open the evidence of P.W.1 and also to seek permission to file an additional written statement, on the ground that the first respondent failed to file the suit with a prayer of declaration.

3. It is seen that the defendants filed their written statement in the year 2013 itself. On the perusal of the written statement, there is absolutely no whisper about the ground raised by the petitioner, in respect of the

prayer sought for by the first respondent herein. The plaintiff's evidence was over and when the matter is posted for further evidence of defendants, the petitioner has come forward with this petition seeking permission to file an additional written statement that too on the ground the suit is not maintainable without the prayer of declaration, in respect of the suit property.

4. As rightly pointed out by the learned counsel for the first respondent, it can be agitated at any time and there is no need to file additional written statement by incorporating the said legal plea. Further, it is one of the basic rule of the pleadings under law and it need not be pleaded. Therefore, the Court below rightly dismissed the petition filed by the petitioner herein. Though the counsel who originally entered appearance on behalf of the petitioner died and thereafter, one Vijayalakshmi represented on behalf of Mr.Kumarasamy she also not appeared today. However, this Court decides the matter on merits and finds that no irregularity or infirmity in the order passed by the Court below.

5. Accordingly, these Civil Revision Petitions are dismissed. The trial Court is directed to complete the trial within a period of six months from the date of receipt of a copy of this order. Consequently, the connected Miscellaneous Petition is closed. No costs.

15.02.2021

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

kv

To

The III Additional Judge, City Civil Court, Chennai.



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G.K.ILANTHIRAIYAN,J.

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CRP(PD).Nos. 3161 and 3244 of 2016

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