



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	01.12.2021
PRONOUNCED ON	10.12.2021

CORAM :

THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

CIVIL REVISION PETITION NO.3519 OF 2016

P.Vithyavathi

... Petitioner

vs.

K.Ashok

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 07.10.2016 of the XVI Assistant City Civil Judge at Chennai in I.A.No.8065 of 2016 in O.S.No.1193 of 2013.

For Petitioner : Mr.R.Chandrasudan

For Respondent : No Appearance

ORDER

This Civil Revision Petition is filed challenging the order dated 07.10.2016 passed in I.A.No.8065 of 2016 in O.S.No.1193 of 2013 on the file of XVI Assistant, City Civil Court, Chennai.

2. The learned Counsel submitted that, Revision Petitioner is the Plaintiff in the Suit. The Suit in O.S.No.1193 of 2013 has been filed for praying judgment and decree in:

(a) Directing the defendant to hand over the vacant possession of the property measuring about 300 Sq.ft in ground floor in the suit schedule property.

(b) Directing the defendant to pay a sum of Rs.5000/- per month towards damages for the occupation of the suit schedule property from the date of passing of judgment and decree dated 05.10.2010 in O.S.No.2400 of 2008 which is aggregating to the sum of Rs.1,40,000/- and future damages till the date of handing over vacant possession of the suit schedule property.



that too by way of filing additional written statement, attempting to plead evidence which is per-se and not permissible.

7. Heard the counsel for the Petitioner.

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8. It is evident that the O.S.No.2400 of 2008 which was filed by the respondent/defendant for partition came to be dismissed by the XIII Assistant City Civil Court, Chennai on contesting the issue, the plaintiff therein has miserably failed to prove the case, against which the respondent/defendant has not filed any appeal. The respondent/defendant has failed to explain as to the reason for raising the plea that too by way of additional written statement and he could have very well countered, misrepresentation or fraud if any in the earlier suit in the manner known to law. Since, the judgment in O.S.No.2400 of 2008 was passed as early as on 05.10.2010. The petition to receive additional written statement was filed only to delay the proceedings in the Trial Court.

9. The Trial Court having come to the conclusion that, on perusal of the pleadings in the additional written statement which speaks about the judgment granted in O.S.No.2400 of 2008 was already pleaded in the original written statement and on perusal of Order VIII Rule 9 of CPC, it reveals that, no pleading subsequent to the written statement of defendant other than by way of defence to a set-off or counter-claim shall be permitted, except by the leave of the Court upon such terms as the Court thinks fit, but the Court may at any time require a written statement or additional written statement from any of the parties and fix a time of not more than thirty days from presenting the same ought not to have allowed the Application. Further, the Trial Court found that admittedly no new pleadings was found in the additional written statement and should not have entertained the application, since the respondent/defendant has come up with the application at the belated stage that too during the trial and part heard stage. The Trial Court did not take into consideration the delay of nearly one year in filing the additional written statement that too at the time of trial containing the details of the suit in O.S.No.2400 of 2008 which was dismissed six years before i.e., on 05.10.2010.

10. On perusal of the materials available on record, factum of the case, it is crystal clear and evident that the intention of the respondent/defendant is to protract the trial proceedings by filing a petition to receive the additional written statement which is not at all warranted at this stage of the case.

11. The Trial Court ought not have allowed the application which has resulted in multiplicity of proceedings and enormous delay in disposing of the suit which is of the year 2013.



12. In view of the above factum of the case, the findings by this Court, the order passed by the XVI Assistant City Civil Court, Chennai in I.A.No.8065 of 2016 in O.S.No.1193 of 2013 dated 07.10.2016 is liable to be set aside, hence the same is set aside.

13. Accordingly, the order passed by the learned XVI Assistant City Civil Judge, Chennai in I.A.No.8065 of 2016 in O.S.No.1193 of 2013 dated 07.10.2016 is hereby set aside and this Civil Revision Petition stands Allowed. Considering the fact that the Suit is of the year 2013, the learned XVI Assistant City Civil Judge, Chennai is directed to dispose of the Suit, preferably, within a period of six months from the date of receipt of a copy of this order. No costs. Consequently, connected C.M.P.No.17876 of 2016 is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vm

To:

XVI Assitatnt City Civil Judge,
Chennai.

+1cc to Mr.R.Chandrasudan, Advocate, S.R.No.65610

C.R.P.No.3519 of 2016

KSM(CO)
PM/07/01/2022