

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.07.2021

Coram

The Hon'ble Mr. Justice **C.V.KARTHIKEYAN**

C.R.P.PD.No.2335 of 2020 &  
CMP No.14676 of 2021

1.Siluvai Mary  
2.M.Pushparaj  
3.Moovarasu

... Petitioners/Petitioners 2 to 4/  
Defendants 2 to 4

Vs

1. Devasagayam  
2. M.Madalaimuthu

... 1<sup>st</sup> Respondent/Respondent/Plaintiff

... 2<sup>nd</sup> Respondent/1<sup>st</sup> Petitioner/1<sup>st</sup>  
Plaintiff

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal orders dated 24.11.2020 passed in I.A.No.2 of 2019 in O.S.No.306 of 2015 on the file of the III Additional District Judge, Salem.

For Petitioners ...

Mr.P.Jagadeesan

For Respondent ..

Mr.D.Shivakumaran for R1

Mr.V.Sanjay for R2

**ORDER**

The second, third and fourth defendants in O.S.No.306 of 2015

<https://www.mhc.tn.gov.in/judis/> now pending on the file of the III Additional District Court, Salem are

the revision petitioners herein. They are aggrieved by the order dated 24.11.2020 passed in I.A.No.2 of 2019 which application had been preferred by them under Order VIII Rule 9 C.P.C. seeking permission to file additional written statement in the suit.

2. O.S.No.306 of 2015 had been filed by the plaintiff seeking a declaration that a partition deed dated 10.03.2015 executed among the defendants is null and void and not binding on the plaintiff in respect of one of the items of the suit property and for a declaration that the plaintiff is the absolute owner of further items of the suit property and for recovery of possession and also for a direction to the defendants to divide one of the items of the suit property into equal shares and allot one share to the plaintiff and further consequential reliefs. In effect, it is a suit on property seeking title over the property. The defendants had entered appearance and also filed the written statement. Particularly, the first defendant who is shown as the second respondent in the present revision had filed the written statement. Thereafter, the fourth defendant, who is the son of the first defendant filed I.A.No.2 of 2019 under Order VIII Rule 9 of C.P.C. seeking permission to file additional written statement.

3.Mr.D.Shivakumaran, learned counsel for the first respondent/plaintiff pointed out the inconsistencies among the plea raised by the defendants themselves. The learned counsel pointed out that it was the first defendant who had filed the written statement originally and the other defendants had adopted the same. Subsequently, the fourth defendant had verified the additional written statement, but the application in I.A.No.2 of 2019, though the affidavit was sworn only by the fourth defendant alone had been filed on behalf of all the defendants. It is also pointed out that in the present revision petition, the first defendant had been shown as the second respondent. Quite apart from all these facts, it had been stated by Mr.D.Shivakumaran that if reasons are not properly advanced for filing an additional written statement, the Court should scrutinize the said affidavit filed in support of the said application and if additional written statement has been sought to be filed, as a matter of course, without stating any new facts, then the court can always reject the same. In this connection, the learned counsel also relied upon the judgment of a learned Single Judge of this court in the case of ***A.Manohar Prasad and Others V. Prasad Production Pvt. Ltd.*** reported in ***(2019) 1 LW 54.***

4. Paragraph 10 of the judgment extracted hereunder:

*10. No doubt, that in a catena of judgments, it has been held that an application seeking permission to file such an additional written statement can be permitted with the Courts leave at any stage. However, such a discretion of granting leave to file additional written statement could be exercised by the trial Court only after satisfying itself that the defendant had a reasonable cause for not having raised this plea at an earlier point of time and for any other reasons for the delay in receiving such pleas at the belated stage and while considering such reasonings, the trial Court would also be required to consider the conduct of the parties and ascertain as to whether the defendant is indulging in any act of protracting the proceedings or otherwise causing any hardships to the plaintiff. To put it in other words, what would be required for granting such a leave to file additional written statement under Order 8 Rule 9 is that the reasons adduced therein should be sufficient enough to touch the conscience of the trial Court to exercise such discretion. It goes without saying that such an application without proper reasoning or without any reasonings at all, requires no consideration and the trial Court will not be justified in exercising its discretion in the absence of any reasoning, since Order 8 Rule 9 bars additional pleadings, after filing of the written statement.*

5. Mr.P.Jagadeesan, learned counsel for the revision petitioner however pointed out that after perusal of the original written statement which had been filed by the father, the fourth defendant found that several facts had been left out and are required to be stated. It had been stated that in the original written statement, there was no mention about a registered partition deed dated 21.06.1978 and also another partition deed dated 10.11.1977 which according to Mr.P.Jagadeesan, will have a direct bearing on the reliefs sought in the plaint and on the stand taken by the defendants with respect to the averments made in the plaint.

6. The learned Judge however found fault in the pleading of these two written statements by stating that entirely inconsistent stand had been taken, as originally the defendant had stated that no partition was effected and therefore stated that introducing the two partition deeds would mean that the defendants have taken a stand on a different footing.

7. There is also another aspect which is pointed out by Mr.P.Jagadeesan, namely, that the defendants herein had an occasion to file an earlier suit in O.S.No.520 of 2000 on the file of the I Additional District Munsif Court, Salem and it is stated that reference to such suit, had not been made in the plaint. Therefore, an obligation arose on the defendants to point out that fact by way of additional written statement.

8. Let me not examine all these facts in detail because all these are matters of evidence. It would be inappropriate to permit the parties to plead facts to their knowledge. It is also common knowledge that occasions always arise when during the pendency of the suit, facts/documents which existed even prior to the institution of the suit would be recalled/found necessitating the plaintiff or the defendant to put them forth before the court. The court of the first instance is the court to settle all the facts and should provide some extra latitude for inclusion of pleadings relating to all the facts particularly when such pleadings are substantiated or authenticated by documents.

9. In the present case also whether the introduction of the two partition deeds would be destructive to the defendants is an issue, the learned Judge should decide on conclusion of evidence. Even while examining the matter on the basis of the affidavits, it appears that the learned III Additional District Judge, Salem, has come to certain conclusions which may not be acceptable to the parties concerned and which conclusion should have been reached only on examination of evidence and after affording the respective parties to speak in the witness box and adduce evidence.

10. The order under revision should be interfered with and even though this conclusion is very seriously objected by Mr.D.Shivakumaran, I would rather grant liberty to the plaintiff to file reply to the additional written statement and thereby complete the pleadings and thereafter invite the parties to adduce evidence and to grace the witness box.

11. The order under revision is set aside and I.A.No.2 of 2019 is allowed and permission is granted to the defendants to file additional written statement. Even without filing necessary application seeking leave of the court, the plaintiff is granted liberty to file reply statement. Necessary time limit for the same shall be decided by the learned III Additional District Judge, Salem, before whom O.S.No.306 of 2015 is pending.

12. Accordingly, this Revision is allowed. No order as to costs. Consequently, connected miscellaneous petition is closed.

**08.07.2021**

Index : Yes/No

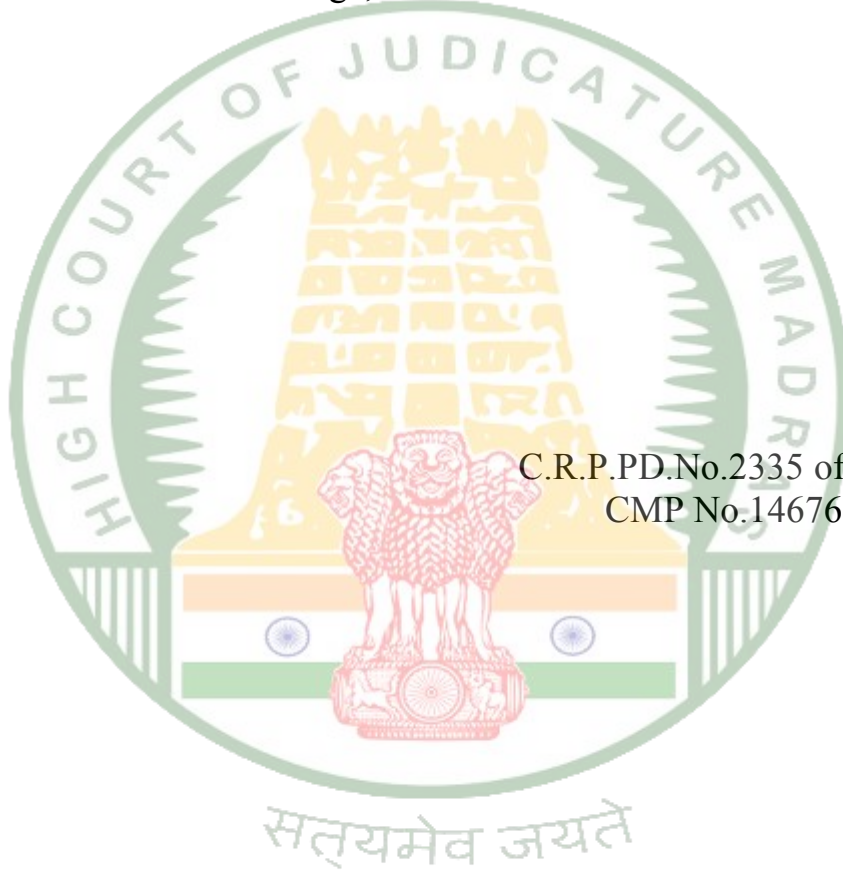
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**C.V.KARTHIKEYAN,J.**

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To

The III Additional District Judge,  
Salem.



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