

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.04.2021

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

**C.R.P(PD).No.3649 of 2019
and C.M.P.No.23960 of 2019**

1.G.Rajendiran
2.G.Sampath
3.Vijaya Lakshmi

...Petitioners

Vs

1.Balambigai
2.Varalakshmi

...Respondents

Revision Petition filed under Article 227 of the Constitution of India to set aside the interim order dated 10.04.2019 in I.A.No.991 of 2018 in O.S.No.172 of 2012 passed by the learned Principal District Judge of Kancheepuram at Chengalpattu.

For Petitioners : Mr.K.V.Babu

For Respondents : Mr.J.Arokhiaraj

ORDER

The 2nd, 3rd and 5th defendants in O.S.No.172 of 2012, now pending on the file of the learned Principal District Judge of Kancheepuram at Chengalpattu are the present revision petitioners. They are aggrieved by the order passed in I.A.No.991 of 2018. That particular interlocutory application had been taken out by them under Order VIII Rule 8 of CPC seeking leave to file an additional written statement.

2.The suit in O.S.No.172 of 2012 had been filed seeking partition and separate possession of the schedule mentioned properties and for consequential relief of appointment of Advocate Commissioner to effect such partition and also for payment of future profits and for costs of the suit. The defendants did not participate in the judicial proceedings. An exparte decree was passed on 29.08.2013. Thereafter, a petition was filed to set aside the exparte decree on 09.03.2015 along with a delay of 528 days. That application was allowed on 05.09.2017. It is to be mentioned that even though earlier a written statement was filed, subsequent to the exparte

decree being set aside, the present application came to be filed seeking permission to file an additional written statement.

3.It is the contention of Mr.K.V.Babu, learned counsel who appears for the revision petitioners that in the additional written statement, only few additional facts were stated, namely, that the present revision petitioners had spent some money towards taking care of their sister and their mother and had also made certain contributions towards the purchase of the property. It is therefore contended that there is no material difference and a new case is not brought out by the additional written statement and there is no new stand taken contesting the case of the plaintiff.

4.This statement by Mr.K.V.Babu, learned counsel for the revision petitioners is very seriously questioned and disputed by Mr.Arokhiaraj, learned counsel for the respondents/plaintiffs. The learned counsel stated that by way of this additional written statement, the two facts which are additionally mentioned, namely, that the petitioners herein had taken care of their sister and their mother and had also contributed towards the purchase

price of the properties, could very well have been stated even in the written statement which was filed earlier.

5.A perusal of the records shows that the said written statement had also been verified by the second defendant. The relevant facts to contest the case of the plaintiff had been stated. With respect to the fact that the mother was looked after by the revision petitioners, even in the earlier written statement in paragraph 6, it had been stated that the first respondent, who is aged about 90 years and bedridden has been looked after only by the 1st, 2nd and 3rd defendants. It is also stated that the 5th defendant, who is aged about 60 years is undergoing treatment for diabetes and is under regular medication. It had also been stated that the second defendant had in the year 2002 spent about Rs.6 lakhs for transplantation of kidney to treat the 5th defendant. Therefore, necessary pleadings with respect to taking care of the mother and the sister had been pleaded. Similarly in paragraph 5, again issues relating to the marriage of the sister, sridhana property and other aspects had also been pleaded. The facts now brought out, are not new facts but facts which already existed when the written statement was filed.

6. There is no sufficient reason given to plead those facts for the first time by way of additional written statement. The learned Judge in the course of the order had very clearly observed that the defendants had taken the very same defence in the additional written statement as already taken in the earlier written statement but only a little more elaborately. Attention had been drawn to paragraph 6 of the additional written statement which relates to item No.2 and the claim that the plaintiff is not entitled for any share in the suit property. It is stated that the property belongs to Tambaram Greater Municipality, but that is an issue which can be put in cross examination to the witness by the plaintiff. I am told that examination of witness had already commenced and that is a particular averment which could have been added as an amendment to the written statement. But in view of the fact that under Order VI Rule 17 of CPC, pleadings cannot be amended after the trial had commenced and the defendants have also taken a round about method by seeking permission to file an additional written statement. That procedure to circumvent the provision of law cannot be accepted and I am not inclined to grant the relief.

7. Accordingly, the Civil Revision Petition is dismissed. Let the parties go for the trial on the pleadings available and on the issues framed. No order as to costs. Consequently, connected miscellaneous petition is closed.

19.04.2021

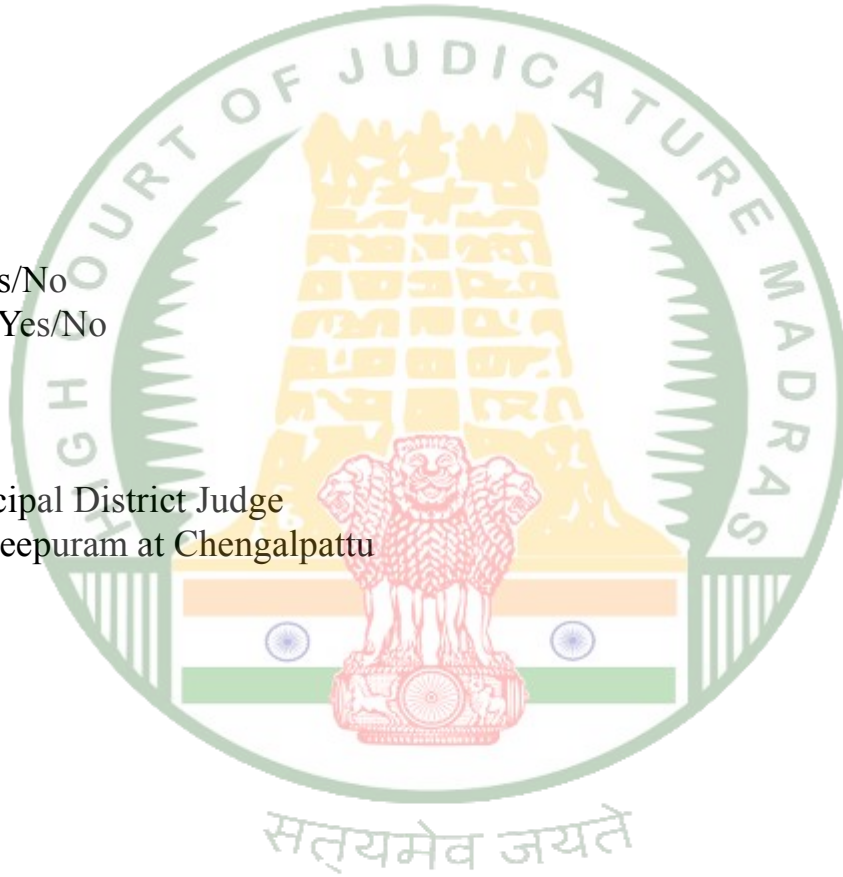
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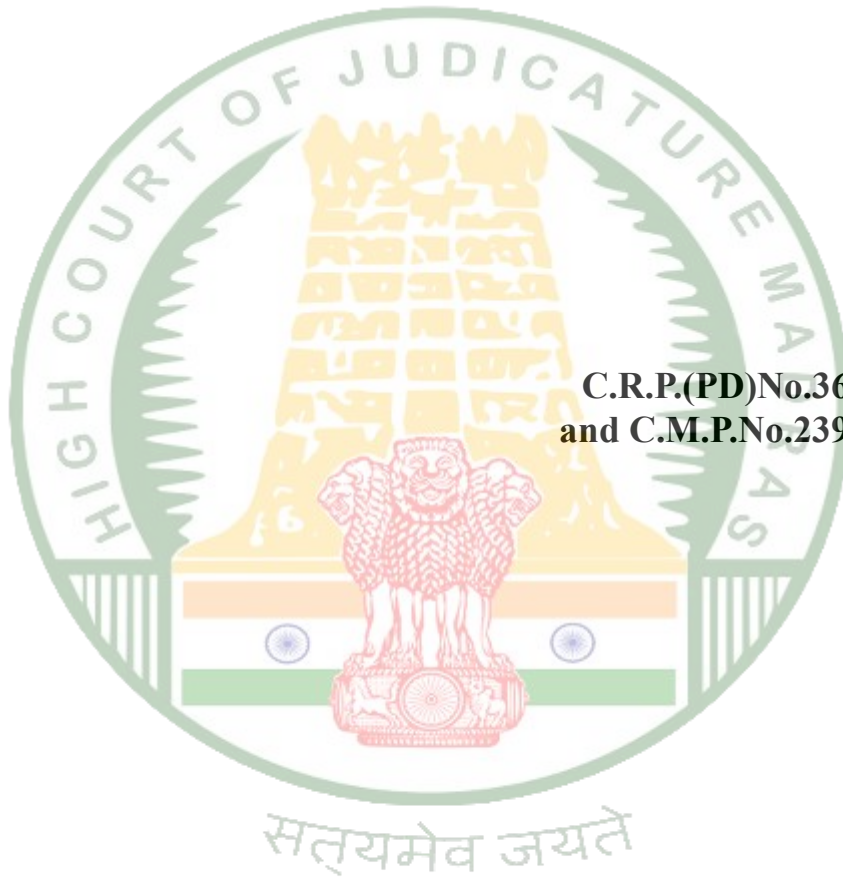
The Principal District Judge
of Kancheepuram at Chengalpattu



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C.V.KARTHIKEYAN, J,

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