

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.01.2021

C O R A M

THE HON'BLE MR. JUSTICE **KRISHNAN RAMASAMY**

C.R.P.(PD)No.3403 of 2018
and C.M.P.No.19179 of 2018

A.B.Anantharaj,
S/o.Babu Roa

...Petitioner

Vs

Jagadeeshan
S/o.Rathna Naicker

... Respondent

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, prayed to set aside the fair and decretal order dated 14.02.2018 made in I.A.No.955 of 2018 in O.S.No.1510 of 2012 on the file of the XII Assistant City Civil Court, Chennai by allowing this Civil Revision Petition.

For Petitioner : Mr.N.Manokaran

For Respondent : No Appearance

ORDER

This Civil Revision Petition has been filed against the order made in I.A.No.955 of 2018 in O.S.No.1510 of 2012 dated 14.02.2018 on the file of the XII Assistant City Civil Court, Chennai.

2.The learned counsel for the petitioner submitted that the

petitioner/plaintiff has filed an application for amendment before the Court below and the said amendment was allowed. While allowing the application for amendment the respondent/defendant was permitted to file additional written statement. However, while filing the written statement the respondent supposed to have restricted the averments only to the extend to counter for the new pleadings made by the petitioner. On the other hand, the respondent filed written statement which is beyond the scope of Order VIII Rule 9 CPC. Therefore, the petitioner filed an application to struck out the defence of the respondent in the additional written statement. The Court below without considering the aspect mentioned by the petitioner has dismissed the application stating that the issues that are raised in the additional additional statement are relating to the question of law and those issues may even otherwise raised without filing additional written statement. Hence, prayed to set aside the order passed by the Court below.

3. Heard the learned counsel for the petitioner and perused the materials available on record. None appeared on behalf of the respondent.

4. Upon hearing the learned counsel for the petitioner and on perusal of

the order passed by the Court below, this court feels it would be appropriate to reproduce the relevant portion of the order passed by the Court below, which is extracted hereunder:

“As per the additional written statement the defendant raised the following defences

- 1)The plaintiff has failed to mentioned whether it is a private trust or a public trust.*
- 2)Whether the original plaint was in accordance with order 7 rule 3 of CPC.*
- 3)The suit is barred by limitation.*
- 4)Non-joinder necessary parties.*
- 5)No documents were filed to establish his continuous possession as per the revenue and municipal authorities.*
- 6)Suit is under valued.*
- 7)No cause of action.*
- 8)Jurisdiction.*
- 9)Doctrine of Res-judicata.*

While perusing the additional written-statement most of the defences pleaded are relating to question of law. The defendant has not withdrawn any of the admissions made in the original written-statement. The defences taken in the additional written-statement are not contradictory to the original written-statement. Under order 6 rule 16 of CPC

deals with striking out pleading:- The court may at any stage of the proceedings order to be struck out or amended any matter in any pleading-

(a) which may be unnecessary, scandalous, frivolous or vexatious or

(b) which may tend to prejudice, embarrass or delay the fair trial of the suit, or

(c) which is otherwise an abuse of the process of the court

The additional written-statement filed by the respondent / defendant does not come under any of the category as adumbrated under order 6 rule 16 of CPC. It is pertinent to note that the petitioner / plaintiff has failed to state what are all the defences taken by the respondent / defendant have to be struck out by this court. While arguing the case, the petitioner / plaintiff has submitted that para No.4 of the additional written-statement was not at all raised in the original written-statement. Even assuming that it was not taken by the respondent / plaintiff it can be treated as an additional defence in support of his case. Most of the defences taken in the additional written-statement are relating to question of law. Under such circumstances the question of law can be raised at any time and there is no bar. The additional written-statement will not prejudice the

petitioner / plaintiff in any manner. Already the suit was filed on the year 2012 and the trial is not yet commenced. The petitioner / plaintiff has chosen to file a petition one after another and even though the suit was posted in the special list, the plaintiff has not chosen to appear before this Court, on the contrary the present petition has been filed. The respondent / defendant has argued that the defenses taken in the additional written-statement can be treated as additional defence and no new defence is introduced. Therefore the additional written-statement will not affect the right of the petitioner / plaintiff in any manner. The petitioner has not list out what are all the new defences introduced by the respondent / defendant in his additional written-statement. In view of the above discussion the petitioner is not entitled to get the reliefs sought in the present petition and the same is liable to be dismissed.”

On perusal of the above order, it could be seen that the grounds raised in the additional written statement appears to be relating to the questions of law and these aspect dealt with by the Court below in the elaborate manner.

5.Hence, this Court is of the view that issues relating to the question of law can be mentioned in the additional written statement, the same can be raised at any point of time and there is no impediment for the petitioner if the same is continuing in the written statement. However, this Court permits the revision petitioner to raise all the objections at the time of the final argument in the suit, if so advised.

6.With the above direction, this Civil Revision Petition is disposed of. No cost. Consequently, connected miscellaneous petition is closed.

06.01.2021

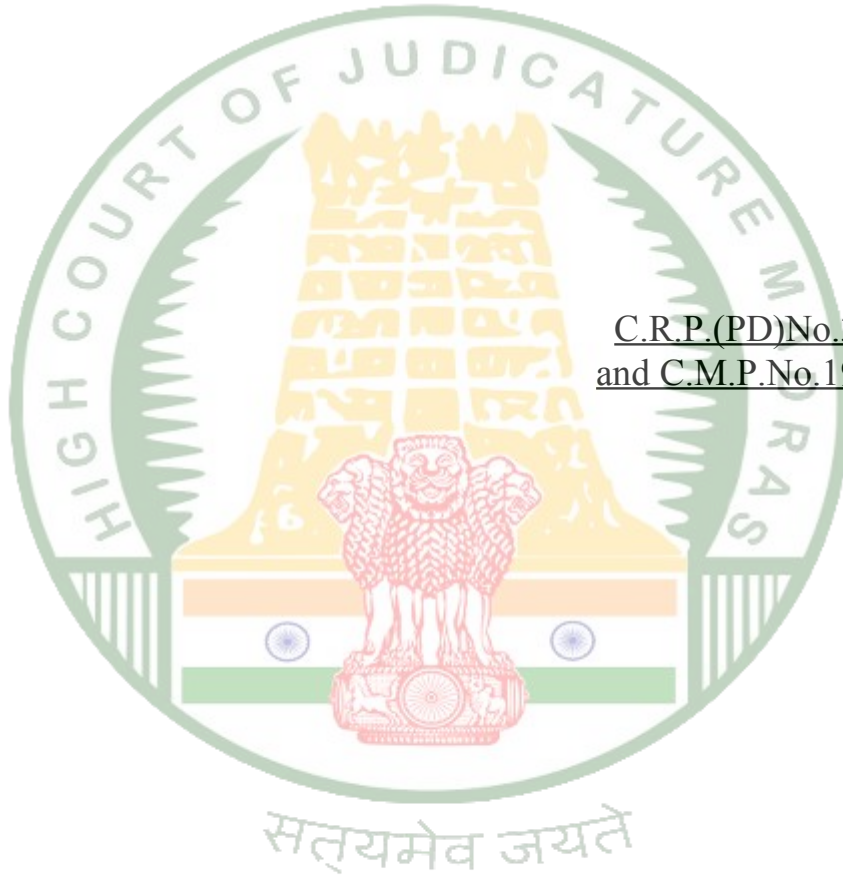
Index: Yes/No
Internet: Yes/No
Speaking order/Non-speaking order

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To:
The XII Assistant City Civil Court,
Chennai.

KRISHNAN RAMASAMY,J.

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