

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.01.2021

CORAM :

THE HONOURABLE MR.JUSTICE **KRISHNAN RAMASAMY**

C.R.P (PD).No.3820 of 2018

and

Cmp.No.21229 of 2018

Kavitha Balaram

... Petitioner

Versus

Sitababi (deceased)

1.Y.Suresh Babu

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India pleased, to set aside the order and decretal order dated 04.08.2018 made in M.P.No.69 of 2017 in RCOP.No.23 of 2009 on the file of the District Munsif Cum Rent Controller, Tambaram.

For Petitioner : Mr.R.Thiagarajan

ORDER

This Civil Revision Petition has been filed challenging the order dated 04.08.2018 made in M.P.No.69 of 2017 in RCOP.No.23 of 2009 on the file of the District Munsif Cum Rent Controller, Tambaram.

2.The said M.P.No.69 of 2017 in RCOP.No.23 of 2009 was filed

Order VIII and Rule 9 of CPC., to permit him, to file an additional counter statement, by the second respondent, who is the son of the deceased first respondent.

3.The Court below after considering the arguments on both sides, allowed the above said miscellaneous petition by stating that the additional counter statement filed by the second respondent is nothing but the same as that of the counter statement filed by the first respondent/deceased (Sitabai).

4.Aggrieved against the order passed in M.P.No.69 of 2017 by the Court below, the revision petitioner/landlord has come up before this Court.

5.The learned counsel for the petitioner submitted that M.P.No.69 of 2017 in RCOP.No.23 of 2009 has been filed by the respondent herein to permit him to file an additional counter statement only with an intention to drag the proceedings of RCOP.No.23 of 2009. Further, the Court below held that the additional counter filed by the second respondent was one and the same as that of the counter statement filed by the deceased/Sitabai. When such finding was arrived, the Court below ought not to have permitted the additional counter statement. By virtue of filing of the additional counter statement, now the trial

was re-opened and the parties are required to be re-examined. He further submitted that in order to save the precious judicial time, the additional counter filed by the second respondent/Y.Suresh Babu ought to have dismissed by the Court below. Therefore, she prayed for allowing the revision petition.

6.Though notice was served to the sole respondent and his name was also printed in the cause list, none appeared on his behalf.

7.Heard the learned counsel for the petitioner and perused the materials available on record.

8.On perusal of the records and arguments, it appears that initially the counter statement was filed in RCOP.No. 23 of 2009 by the deceased Sitabai/respondent to substantiate her defence. Subsequently, the trial commenced and the parties were examined. During the course of trial, the respondent/Sitabai passed away. Therefore, an impleading petition was filed by the respondent to implead himself as a legal heir of the respondent/deceased Sitabai. Subsequent to the impleading, the respondent herein filed the above said miscellaneous petition in MP.No.69 of 2017 in RCOP.No.23 of 2009 to permit him to file an additional counter statement. The said application was

allowed by the Court below, inspite of the objection made by the revision petitioner herein.

9.The Court below has stated that the averments made in the counter statement is nothing but one and the same as stated in the counter statement filed by the respondent/deceased-Sitabai. Since there is no new averments in the additional counter statement, no way it is going to affect the case. Therefore, there is no harm and impediment caused to the petitioner herein by allowing the respondent's additional counter statement.

10.This Court after perusing the additional counter affidavit finds that there is no addition of new points in the additional counter statement comparing to the averments in the counter statement of the deceased/first respondent. Under these circumstances, this Court is of the opinion that allowing the second respondent's additional counter affidavit would not affect the interest of the petitioner in any manner.

11.In case, the respondent is allowed to re-examine the parties, the interest of the petitioner would get affected, if the petitioner is not allowed to let in evidence to deny title of the respondent herein.

12. Therefore, in such a view, this Court is inclined to pass the following orders:

(i) The Court below is directed to permit the petitioner to file a reply to the additional counter and the petitioner may be permitted to let in evidence with the denial of title by the respondent.

(ii) With the above observations, this Civil Revision Petition is disposed of. While disposing the civil revision petition, this Court directs the Court below to dispose RCOP.No.23 of 2009, within a period of four months, from the date of receipt of a copy of this order.

(iii) Consequently, the connected miscellaneous petition is closed and

(iv) there shall be no order as to costs.

सत्यमेव जयते

08.01.2021

Index: Yes/No

Internet: Yes/No

Speaking Order/Non Speaking Order

klr

To

The District Munsif Cum Rent Controller, Tambaram.

KRISHNAN RAMASAMY, J.

klt



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