



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 27.04.2021

CORAM :

WEB COPY

THE HONOURABLE **Mr. JUSTICE K.MURALI SHANKAR**

C.R.P.(MD)No.697 of 2021

and

C.M.P(MD).No.3812 of 2021

1.Ganesha Devi

2.Johnsi Rani

... Petitioners

Vs.

1.Jayakalidoss

2.Jayasakthivel

3.Karthigai Pandian

... Respondents

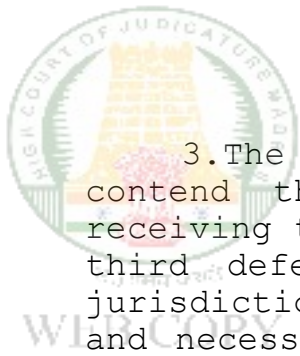
Prayer : Civil Revision Petition filed under Article 226 of the Constitution of India, to set aside the order dated 14/12/2020 made in I.A.No.605 of 2019 in O.S.No.57 of 2005 on the file of the District Munsif, Tirumangalam.

For Petitioners : Mr.M.Mohamed Ajeesdheen

ORDER

This revision is directed against the order passed in I.A.No.605 of 2019 in O.S.No.57 of 2005 dismissing the petition filed under Order 8 Rule 9 of the Code of Civil Procedure.

2.The revision petitioners, who are the plaintiffs, have filed a suit claiming partition and for permanent injunction. The third respondent/third defendant has filed the written statement / counter claim seeking recovery of possession from the plaintiffs and the defendants 1 and 2. The plaintiffs have also filed their reply statement to the counter claim/written statement filed by the third respondent. It is evident that the trial was commenced and when the suit was pending for cross-examination of P.W.1, the petition under Order 8 Rule 9 of the Code of Civil Procedure came to be filed seeking permission to file additional reply statement and to condone delay occurred in filing the same. The second revision petitioner, who filed an affidavit in support of the application filed under Order 8 Rule 9 of CPC has alleged that they have filed the reply statement, in which, some of the material facts were omitted to elucidate by oversight and those such facts are very essential to decide the right of the counter claim of the third defendant. Except the above reason, the petitioners have not canvassed or advanced any other reason or ground to sustain the above application.

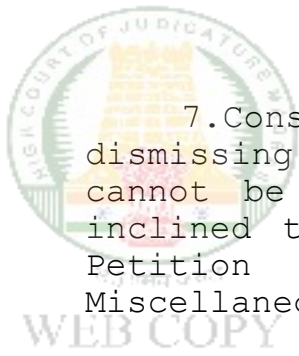


3.The learned counsel for the revision petitioners would contend that the trial Court has committed an illegality in receiving the counter claim, that the trial Court has permitted the third defendant to lay the counter claim beyond the pecuniary jurisdiction of that Court and that therefore, it has become just and necessary to file the additional reply statement raising the objections with respect to counter claim, since the trial Court has utterly failed to consider the same.

4.It is pertinent to mention that the suit was filed in Jan-2005 by the revision petitioners. It is evident that the third defendant has filed his counter claim and written statement on 27.03.2006 and the revision petitioners have filed the reply statement on 12.09.2007 and that the interlocutory application to receive the additional reply statement was filed on 27.11.2019. As rightly observed by the learned trial Judge, the petitioners have filed the above application to receive the additional reply statement after the lapse of more than 12 years.

5. Section 21(2) of the Code of Civil Procedure contemplates that no objection as to the competence of a Court with reference to the pecuniary limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity, and in all cases where issues are settled, at or before such settlement, and unless there has been a consequent failure of justice. In Tamil Nadu Court Fees and Suit Valuation Act, similar provisions are available in Section 12. As per Section 12(2) of the said Act, any defendant, taking a stand that the suit has not been properly valued, has to plead the same at the earlier opportunity and before the evidence is recorded on the merits of the claim and that all question arising on such pleas shall be heard and decided before evidence is recorded affecting such defendant, on the merits of the claim. Section 12(5) contemplates that all questions as to the value for the purpose of determining the jurisdiction of Court shall be heard and decided before evidence is recorded on the merits of the claim. Though there is no specific mention of the counter claim, there is no bar or prohibition for applying the same principle to the counter claim also. It is settled law that the objection relating to pecuniary or territorial jurisdiction should be raised at the earliest and if the parties omit to plead, the same cannot be allowed to be raised at a later stage.

6.On considering the facts and circumstances, as rightly observed by the trial Court, this Court is of the view that the petitioners have now come forward with the above petition to file additional reply statement only to protract the proceedings. It is pertinent to note that the suit was filed in the year 2005 and already more than 15 years had lapsed.



7.Considering the above, the decision of the trial Court in dismissing the application to receive the additional reply statement cannot be found fault with and consequently, this Court is not inclined to admit the revision. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (AE)

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/ /2021

Sub Assistant Registrar(CS)

Note In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The District Munsif, Tirumangalam

C.R.P. (MD) No.697 of 2021
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KB(18.06.2021) 3P 2C