



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 10.02.2021

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P (MD) No.543 of 2014

and

M.P (MD) No.1 of 2014

V.Pandiammal

...Petitioner/Respondent/Defendant

Vs.

T.T.Sivakumar

...Respondent/Petitioner/Plaintiff

PRAYER:- Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order dated 12.11.2013 made in I.A.No.273 of 2013 in O.S.No.640 of 2008 on the file of the Principal Subordinate Judge, Madurai.

For Petitioner	:	Mr.S.Parthasarathy
For Respondent	:	No appearance

O R D E R

This revision is filed against an order allowing the plaintiff to file a reply statement in O.S.No.640 of 2008.

2. The suit is one for specific performance. The suit was filed on 17.10.2008. The written statement was filed by the defendant on 11.02.2009 denying the execution of the agreement and accusing the plaintiff of creating the agreement. The suit went for trial. The plaintiff's side evidence was over and the defendant was examined in chief. When the matter was posted for cross examination of the defendant, the plaintiff came up with this application seeking to file a reply statement denying the claim made in the written statement and also setting out certain new facts.

3. This is resisted by the defendant contending that this would amount to filling up the lacunae in the pleadings and it will also undo the effect of the cross examination of the plaintiff's witnesses by the defendant. The learned trial Judge however allowed the application on the conclusion that it does not alter the cause of action.



4. I have heard Mr.S.Parthasarathy, learned counsel appearing for the petitioner. The respondent, though served, is not appearing either in person or through counsel duly instructed.

5. Mr.S.Parthasarathy, learned counsel appearing for the petitioner would vehemently contend that the principles applicable to amendment of pleadings cannot be applied for filing a reply statement. When an application is filed under Order 8 Rule 9 C.P.C to introduce subsequent pleadings, the court must exercise caution and see that the effect of cross examination of the witnesses already been examined is not taken away by the pleas introduced in the reply statement.

6. The written statement was filed by the defendant even on 11.02.2009 and 4 years thereafter, after examination of D.W.1 in chief, the present application has been filed claiming that a reply statement is necessary because of the complete denial of execution of agreement in the written statement by the defendant. The suit being one for specific performance and the defendant's plea is that the agreement itself is a forged instrument, it is for the plaintiff to prove the agreement by acceptable and tangible evidence. Denial of the claim made by the defendant in the written statement is not at all necessary. If the plaintiff is able to prove the agreement he has to succeed otherwise he will have to necessarily fail. Therefore, a reply statement is not at all required for the purpose stated in the affidavit filed along with the application. I find that the reply statement sought to be introduced with the oblique motive to minimize the effect of cross examination of the plaintiff's witness by the defendant. In view of the same, the trial court was not right in allowing the application on payment of costs. Accordingly, the fair and decreetal order dated 12.11.2013 made in I.A.No.273 of 2013 in O.S.No.640 of 2008 on the file of the Principal Subordinate Judge, Madurai, is set aside.

7. Considering the fact that the suit is of the year 2008, the trial court is directed to dispose of the suit within a period of 4 months from the date of resumption of actual physical hearing of the Principal Subordinate Court, Madurai.

8. In fine, this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

/ /2021

Sub Assistant Registrar



To:

- 1.The Principal Subordinate Judge,
Madurai.
- 2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai. **(2 Copies)**

Copy To:

The Registrar(Judicial),
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.S.PARTHASARATHY, Advocate (SR-4404[F] dated 11/02/2021)

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and
M.P (MD) No.1 of 2014
10.02.2021

cm

MS/05.03.2021/3P.6C