



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.01.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD).No.3096 of 2015

&

M.P.No.1 of 2015

Ka.Lavakumar

.. Petitioner

Vs.

1.Shanmugham

2.Manikkaraj

.. Respondents

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal dated 23.01.2015 passed in I.A.No.1095 of 2014 in O.S.No.38 of 2012 on the file of the Additional District Munsif Court, Tiruchengode.

For Petitioner : Mr.P.Valliappan

For Respondents : No appearance

ORDER

(The matter is heard through “Video Conferencing”.)

This Civil Revision Petition is filed to set aside the fair and decreetal dated 23.01.2015 passed in I.A.No.1095 of 2014 in O.S.No.38 of 2012 on the file of the Additional District Munsif Court, Tiruchengode.



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2.The petitioner is plaintiff in O.S.No.38 of 2012 on the file of the Additional District Munsif Court, Tiruchengode. He filed the said suit against the respondents as defendants 2 & 3 and two others for partition with regard to second item of suit property, for a declaration that the petitioner is entitled to half share in the first item of the property, permanent injunction and partition of second item of suit property and for separate possession of the property allotted in the final decree. The second respondent herein filed written statement on 26.06.2012 and the same was adopted by the first respondent and 4th defendant and are contesting the suit. Trial commenced. The respondents filed the present I.A.No.1095 of 2014 under Order VIII Rule 9 of the Code of Civil Procedure for permission to file additional written statement.

3.According to the respondents, the petitioner herein has filed a document dated 25.06.1996 / release deed executed by his Paternal Aunt Perumayee alleging that she released her share in favour of Muthusamy Gounder, Grandfather of the petitioner and father of the petitioner, after filing written statement by the respondents and 4th defendant. The said document was marked as Ex.P10. The petitioner has not filed any genealogical tree



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along with the plaint, but has filed the same after respondents filed written statement. Hence, it is necessary to bring out this fact by way of additional written statement and prayed for allowing the I.A.No.1095 of 2014.

4.The petitioner herein filed counter affidavit denying all the averments in the affidavit filed in support of the present application and submitted that the petitioner filed I.A.No.488 of 2014 for permission to file reply statement. The said I.A.No.488 of 2014 was allowed on 25.06.2014. The reply statement was taken on file on 25.06.2014. The petitioner along with the reply statement filed 13 documents including release deed dated 25.06.1996 and marked the same as Exs.A1 to A13. The respondents and other defendants are aware of the documents filed along with reply statement. The reply statement was taken on file on 25.06.2014 and trial commenced. The petitioner examined himself as P.W.1 and marked 13 documents as Exs.A1 to A13. The respondents took two adjournments to cross examine the petitioner and cross examined the petitioner at length on 05.08.2014. Further, P.W.2 & P.W.3 were also cross examined by the learned counsel for the respondents. The suit was posted for further evidence on behalf of the respondents. At that stage, the respondents filed the present application, which is not maintainable. If the



application is allowed, it will cause prejudice to the petitioner and prayed
dismissal of the application.

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5.The Learned Judge considering the averments in the affidavit, counter affidavit and reply statement filed by the petitioner, allowed the application on condition that the respondents pay a sum of Rs.500/- (Rupees Five Hundred Only) as cost holding that the petitioner has stated new facts in the reply statement and the respondents must be given an opportunity to put forth their case with regard to the averments in the reply statement.

6.Against the said order dated 23.01.2015 passed in I.A.No.1095 of 2014 in O.S.No.38 of 2012, the petitioner has come out with the present Civil Revision Petition.

7.Though notice has been served on the respondents and their names are printed in the cause list, there is no representation for them, either in person or through counsel.

8.Heard the learned counsel appearing for the petitioner and perused the entire materials on record.



9. From the materials on record, it is seen that after the respondents, who are the defendants 2 and 3 and 4th defendant filed written statement in the suit, the petitioner filed I.A.No.488 of 2014 for permission to file reply statement. The said application was allowed on 25.06.2014 and reply statement was taken on file on that day along with the documents filed by the petitioner. It is also seen from the materials on record that after reply statement was taken on file, the petitioner was examined as P.W.1 and marked 13 documents as Exs.A1 to A13. Thereafter he was cross examined by the counsel for respondents. The petitioner examined two other witnesses as P.W.2 and P.W.3 and the learned counsel for respondents cross examined them also. At the stage, the respondents filed the present application for permission to file additional written statement stating that the petitioner without any pleading marked the documents. The learned Judge took note of the averments in the written statement wherein the petitioner has introduced new fact, allowed the application filed by the respondents, permitting the respondents to file additional written statement. As per Order VIII Rule 9 of the Code of Civil Procedure, after written statement is filed no further pleadings can be filed without permission of the Court, except with regard to counter claim and set off. The court can grant permission to file further



pleadings, if the same is necessary to properly decide the issue in the suit.

The application cannot be rejected on the ground of delay, if the additional written statement is necessary to decide the issue in the suit.

10.The petitioner in the present Civil Revision Petition has not denied the reasoning given by the learned Judge that the petitioner has introduced a new fact in the reply statement. The learned Judge considered the entire materials and allowed the application to file additional written statement, in order to give an opportunity to the respondents to put forth their case with regard to the averments made in the reply statement. There is no error in the order of the learned Judge warranting interference by this Court.

11.In the result the present Civil Revision Petition is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

20.01.2022

ata/krk

Index : Yes / No

Internet : Yes / No

To
The learned Additional District Munsif,
Tiruchengode.



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V.M.VELUMANI, J.
ata/krk

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