



C.R.P.No.2245 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.07.2023

CORAM

**THE HON'BLE MR JUSTICE V.LAKSHMINARAYANAN**

**C.R.P.No.2245 of 2016**

**and**

**C.M.P.No.11644 of 2016**

V.Nandhinipriya

...Petitioner/Petitioner/Plaintiff.

Vs.

1.Tmt.Rangammal

2.C.Vellingiri

3.V.Poornima

4.Dr.G.Karruppasamy

5.S.Velusamy .....Respondent/Respondent/Defendant

**Prayer:**Civil Revision Petition filed under Article 227 of the Constitution of India filed to set aside the fair and decreetal order dated 17.10.2014 made in I.A.No.448 of 2014 in O.S.No.317 of 2013 on the file of the Ist Additional District Court, Coimbatore by allowing this Civil Revision Petition.



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WEB COPY

For Petitioner : Mr.S.Karthikei Balan

For Respondents :

(For R4 and R5) : Mr.G.K.Muthukumar  
for M/s.A.Ram Kumar

(R1 to R3) : No Appearance

### **ORDER**

An application under Order 8 Rule 9 of CPC seeking leave of the court to file a reply statement by the plaintiff has been dismissed.

2. I have heard Mr.S.Karthikei Balan, learned Counsel appearing for the petitioner and Mr.G.K.Muthukumar for M/s.A.Ram Kumar, learned counsel appearing for respondent Nos.4 and 5.

3. The suit has been filed by the daughter claiming that the alienation made by the father does not bind her and has sought for partition of the properties. She originally pleaded that the property belonged to her grandfather, Chinnappan Gounder.

4. A detailed written statement had been filed stating that the defendants had purchased the properties 21 years and 11 years



respectively, before the presentation of the plaint. They claim that the property was the self-acquired property of Chinnappan Gounder and the second defendant had the right to alienate the property. In other words, the categorical case of the defendants is that the alienation is just and proper and the suit is not maintainable.

5. Soon after the presentation of the written statement, a reply statement was filed claiming that Chinnappan's self-acquired properties acquired the status of the joint family properties and therefore, the alienations are not binding.

6. The reply statement was accompanied by an application to receive the pleading. The said application was dismissed by the Trial Court holding that a destructive plea is being raised by the plaintiff and that should not be permitted to come on record.

7. At the stage of Order 8 Rule 9 of CPC, the question of going into the merits of the claim does not arise at all. All that the court should see is



whether the pleading is deliberately dragging on the matter or whether the plaintiff has filed the application before the evidence has been recorded on the merits of the case. In this particular case, the reply statement has been filed within a few months of the written statement. The word “leave” under Order 8 Rule 9 should be given liberal interpretation.

**8.** The parties must be permitted to bring all that they want to say on record. That being the situation, the dismissal of the application under Order 8 Rule 9 is erroneous.

**9.** I would, therefore, grant leave to the petitioner to bring on record the reply statement. The defendants will not be aggrieved or prejudiced because on bringing on record the reply statement, they should be given opportunity to file their additional written statement.

**10.** Mr.G.K.Muthukumar, learned Counsel for the respondents would submit that apart from set-off and counter claim, no other pleading can be received under Order 8 Rule 9. A bare reading of Order 8 Rule 9



would show that a set-off or counter claim does not require the leave of the court and it can be taken on record straightaway. It is only further pleadings which require the leave of the court. The Code of Civil Procedure also does not permit the court to go into the merits of the written statement or merits of the reply statement or any additional written statement, if filed, under Order 8 Rule 9. The test is whether the leave should be granted or not and as already premised, the leave must be liberally construed.

**11.** The next submission of Mr.G.K.Muthukumar, learned Counsel for the respondents is that a new plea taken is inconsistent with the existing plea. Even on this, I am not able to agree with him because the plea in the reply statement states that the properties, which were originally self-acquired properties of Chinnappan, were thrown into the common hotchpotch and therefore, acquired the character of joint family properties. The title of Chinnappan is not being denied but it is the manner of handling of the properties by the family subsequent to the acquisition



which is being added by an additional reply statement. The same would answer the argument of Mr.G.K.Muthukumar on destructive pleas.

**12.** Mr.G.K.Muthukumar, would further submit that this plea was available to the plaintiff at the time of the presentation of the plaint and therefore it cannot be permitted to be raised subsequently. It is pertinent to point out that it is to cover these kind of situations that Order 8 Rule 9 has been incorporated in the Code. A Court must permit the parties to state their full case and thereafter, take up the matter to trial. The plea that it dislodges the case of the plaintiffs also does not hold water. It is always open to the defendant to file an additional written statement in order to substantiate their case. Apart from that, if there is any contradiction between the plaint and the reply statement, I am certain that Mr.G.K.Muthukumar's client will be in a position to bring it forth to the Court at the time of the cross-examination.

**13.** He would finally submit that the additional pleading changes the character of the suit and the nature of relief. In a suit for partition, even if the plaintiff has sought for a lesser or a higher share, it is the duty of the



Court to declare the appropriate share which the parties are entitled to get.

By the mere fact that the plaintiff seeks for 1/6<sup>th</sup> share or 1/4<sup>th</sup> share, the Court is not going to decree the suit. The original plaint is not being supplemented by the reply statement but it is only sub-planted. In other words, the reply statement is in addition to and does not delete the previous stand taken by the parties.

**14.** In the light of the above, I feel that the leave ought to have been granted to the plaintiff. Accordingly, the order passed in I.A.No.448 of 2014 in O.S.No.317 of 2013 on the file of the 1<sup>st</sup> Additional District Court, Coimbatore is set aside. Leave is granted and the reply statement be taken on record. The Trial Court is requested to grant at least four (4) weeks time to the defendant Nos.4 and 5 to file their written statement, to the reply statement.

**15.** With the above observations and directions this Civil Revision Petition stands allowed. No costs. Connected Civil Miscellaneous Petition is closed.

**26.07.2023**



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Index : Yes/No  
Speaking : Yes/No  
Neutral Citation Case : Yes/No

*nst*

**V.LAKSHMINARAYANAN,J.**

*nst*

To:

1<sup>st</sup> Additional District Judge,  
Coimbatore.

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**and**  
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