



C.R.P.(PD) No.2939 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2022

CORAM : JUSTICE **N.SESHASAYEE**

C.R.P.(PD) No.2939 of 2021
and CMP.No.21070 of 2021

1.Lakshmi
2.Selvam

... Petitioners / Respondents / Plaintiffs /

Vs.

1.Susila
2.Shanmugam
3.Dhanapal
4.Chitra

... Respondents / Petitioners / Defendants

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order of the Principal Subordinate Judge at Namakkal, dated 23.08.2021 in I.A.No.2 of 2021 in O.S.No.51 of 2016.

For Petitioners : Mr.P.Valliappan
for M/s.PV Law Associates

For Respondents : Mrs.S.Thankira



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ORDER

The plaintiffs in O.S.No.51 of 2016 on the file of the Principal Sub Court, Namakkal, has come forward with this revision, challenging the order in I.A.No.2 of 2021, by which the trial Court has allowed the prayer of the defendants literally withdrawing the additional written statement filed by the defendants.

2. The quintessence of the case of the plaintiffs is that :

- There existed two adjacent plots of properties. The property in the east originally belonged to the plaintiffs, and the property on the west belonged to the defendants, and they chose to exchange the properties orally, based on which the defendants handed over the western property, and moved to the eastern property.
- The property to the far east belonged to the family of the defendants, and this was cited as the reason why this exchange took place. In other words, the exchange becomes necessary to enable the defendants to have contiguous plots of lands belonging to them.
- In the written statement, the first defendant took up a plea that



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they have prescribed title on to the plot which they obtained in the exchange alleged by the plaintiffs in the adverse possession.

- In the additional written statement, they almost conceded the exchange as alleged by the plaintiffs.
- On the strength of these pleadings, the matter was posted to trial and midway through the trial, the defendants came up with I.A. No.2 of 2021, for withdrawing paragraphs Nos.2 to 6, which otherwise may mean the entire facts stated in the additional written statement. This was allowed.

Challenging which the plaintiffs/revision petitioners have filed the present revision.

3. Heard Mr. P.Valliappan, learned counsel for M/s.PV Law Associates for the revision petitioners and Mrs.S.Thankira, learned counsel for the respondents.

4. The learned counsel for the revision petitioners contended that insofar as the defendants have conceded the aspect of exchange in their written statement, and since the case have also gone to trial and substantially heard the cause for action based on the pleadings, it will be uncharitable for the



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plaintiffs to change the course in the mid-stream of the trial.

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5. Heard Mrs.S.Thankira, learned counsel for the respondents. The learned counsel elaborated how the defendants were short of the real facts, which came to their knowledge while filing their written statement and additional written statement, and how the defendants would be prejudiced if they were not given an opportunity to place the correct facts. She insisted that the trial Court is the first Court of facts and the parties may be given optimum latitude in the matter of presenting the case.

6. Opposing the same, the counsel for the revision petitioners submitted that while it may be necessary that before the trial Court the parties may have a maximum freedom, yet to change the strategy in the middle of the trial, can be upsetting the other party.

7. Here is the situation that in the written statement that was filed, the plea taken was one that the adverse possession is the line of defense to the plaintiffs' claim. In the additional written statement literally the defendants have conceded the case of the plaintiffs, and this constitutes an admission, where facts are admitted in pleadings, it dispenses the other parties from



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even proving it, and to that extent, withdrawing the admission is impermissible, as it attempts to take away the advantage which the plaintiffs have.

8. After hearing the rival submissions and also the order now impugned before this Court, this Court finds that the trial Court was in error in allowing I.A.No.2 of 2021. Let it be on record.

9. The learned counsel for the respondents would now bring to the notice of the Court that while allowing I.A.No.2 of 2021, the learned trial Judge has literally passed an injunction against the defendants that they would not be entitled to file any additional written statement or any new defense. This part of the order is pre-mature and it might have to wait till the defendants contemplate filing an additional written statement. So far as the last leg of the submissions of the counsel for the respondents is concerned, this Court finds there is merit in it. After all, when the defendants have not come out with any additional pleadings or set forth any new defense, it may not be appropriate for the trial Court to anticipate what it could be, and an attempt to apply its mind to something that is not even the contemplation of the defendants for the present. Therefore, the trial Court may have to wait till



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any admission is made by the defendants to file any additional written statement, and may have to consider it only when it actually come before the Court for its consideration.

10. Subject to the observation herein made, this revision is allowed and the order dated 23.08.2021 in I.A.No.2/2021 in O.S.No.51 of 2016 on the Principal Subordinate Judge, Namakkal, is set aside. No costs. Consequently, connected miscellaneous petition is closed.

16.03.2022

Index : Yes / No

Internet : Yes / No

Speaking order / Non-speaking order

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To:

The Principal Sub Judge
Namakkal.



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N.SESHASAYEE.J.,

ds

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