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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	28.02.2022
DELIVERED ON	07.03.2022

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.R.P. (MD)No.1255 of 2021

and

C.M.P. (MD)No.7240 of 2021

Sri Uma Maheswari Modern Rice Mill,
Rice Mill through its Managing Partner,
K.Balasubramaniam. ...Petitioner/1st Respondent/
Plaintiff

Vs.

1.S.P.Duraisamy
2.D.Sasikala ...R-1 & R-2/Petitioners/D-2 & D-3
3.A.Rengasamy ...R-3/Respondent/1st Defendant

PRAYER: Civil Revision Petition under Article 227 of the Constitution of India, to set aside the fair and decreetal order, dated 05.07.2021 in I.A.No.1 of 2020 in O.S.No.51 of 2019 on the file of the Sub Court, Lalgudi and allow this Civil Revision Petition with Costs.

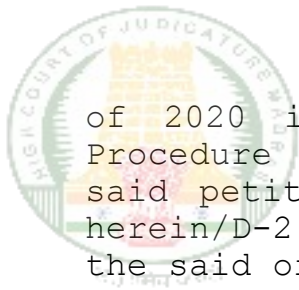
For Petitioner :Mr.H.Lakshmi Shankar
For R-1 & R-2 :Mr.N.Dilip Kumar
For R-3 :No appearance

ORDER

This Civil Revision Petition has been filed to set aside the fair and decreetal order, dated 05.07.2021 in I.A.No.1 of 2020 in O.S.No.51 of 2019 passed by the learned Subordinate Judge, Lalgudi.

2.The parties are referred to as per the rank mentioned before the Court below.

3.The petitioner herein/plaintiff has filed a suit in O.S.No.51 of 2019 on the file of the learned Subordinate Judge, Lalgudi, for permanent injunction. During the pendency of the said suit, the defendant Nos.2 & 3 have filed a interlocutory petition in I.A.No.1



of 2020 in O.S.No.51 of 2019 under Order 8, Rule 9 of Civil Procedure Code, to receive the additional written statement. The said petition was allowed in favour of the respondent Nos.1 & 2 herein/D-2 & D-3 by the Court below on 05.07.2021. Aggrieved over the said order, the revision petitioner is before this Court.

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4.Heard on either side. Perused the material documents available on record.

5.This Civil Revision Petition filed on the ground that the Court below has failed to see that the petition to file an additional written statement is highly belated and after 11 years of filing the suit and 21 ½ years from the date of the sale deed. The court below ought to have considered that the respondents 1 & 2 have not sought for amendment of their plaint in O.S.No.50 of 2019 by seeking to introduce a prayer for declaration that the sale deed, dated 18.06.1999, is invalid. In such circumstances, they cannot be permitted to file an additional written statement in the revision petitioner's suit as it would be mutually contradictory. They cannot admit the sale deed in one case and impeach it in another case.

6.The petition in I.A.No.1 of 2020 was filed by the R-1 & R-2 herein/D-2 & D-3 to receive additional written statement the same was allowed.

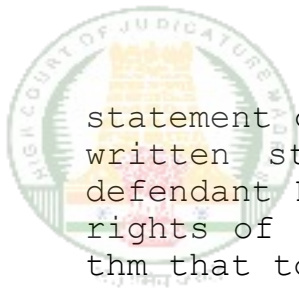
7.The suit in O.S.No51 of 2019 was filed by the plaintiff for restraining the defendants, their men, agents, servants, relatives and al persons claiming under them from interfering with the peaceful possession and enjoyment of the plaintiff in respect of the suit property described hereunder either by committing trespass by tampering the barbed wire fence on the north eastern side of the suit property or in any manner. The suit properties is in S.No.119/1A1, 1 acre 77 cents.

8.The written statement was filed by the defendant Nos.2 & 3 on 07.10.2009. The 3rd defendant has filed another suit in O.S.No.669 of 2009 for demarcation of her property in 'C' that is in S.No.119/1A2 & in S.No.119/1A1, 77 cents on the basis of sale deed, dated 14.09.2005.

9.The 3rd defendant has also admitted the sale by Rangasamy to this Revision petitioner on 18.06.1999. In the sale deed, dated 14.09.2005, purchased by the 3rd respondent, south and west boundaries are this Revision petitioner's Mill. From the year 1999, the Revision petitioner is in possession.

10.The suit filed by the 3rd defendant is only for demarcation. Now the 3rd defendant has filed written statement and denied the rights of the revision petitioner after 11 years.

<https://hcservices.courts.gov.in/hcservices>, the Defendant Nos.3 & 4 have filed written



statement on 07.10.2009. Now, this petitioner to receive additional written statement filed by the D-3 & D-4 on 13.10.2020. The defendant Nos.2 & 3 cannot raise all the issues after admitting the rights of revision petitioner in her sale deed and in suit filed by thm that too after 11 years.

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12.Eventhough, the D-3 & D-4 have stated in the written statement that before executing the sale deed by the power agent one of the Principal died before execution of the sale deed, they have not objected the sale deed. Now they objected the sale deed which is new pleading.

13.The Judgment reported in **2005(4) LW 411, P.N.Deenadayalan & Another Vs. Ramagiri Narasimhulu Chetty and Others**, in which the Hon'ble Supreme Court held as follows:

....

"By a careful reading of the Additional Written statement, it is clear that the Third Defendant has put forth a new set of facts and new defence by introducing a new case. In the supporting affidavit, no convincing reason has been stated for not putting forth the above facts and defence in the earlier Written statement. In the affidavit, the First Defendant has alleged that those facts have been omitted to be pleaded. It is relevant to note that the First Defendant is not an illiterate, but a practising Advocate. He cannot be allowed to take shelter that it has been omitted to be mentioned. In the absence of convincing reasons for receiving the Additional Written statement, at the stage of trial the Additional Written Statement cannot be entertained. In AIR 1958 Madras 383 (Nanjan Vs. Selai), it is held thus:-

"If the party wants to file an additional written statement, he has file a petition stating the reason why he failed to say these things in the original written statement, and what excuse there is for allowing him to file an additional written statement at that stage. Then the other side has to be given an opportunity to oppose the petition and contend that such additional written statement should not be



entertained at that stage. Then the Court has to give its decision as to whether the additional written statement is to be admitted or not."

14. Without additional written statement the issues in the suit can be decided, as per judgment reported in 2009(15)SCC 528, in the case of Olympic Industries Vs. Mulla Hussainy Bhai Mulla Akberally and Others. The relevant portion is extracted hereunder:

....
"It is also well settled that while allowing the additional counter-statement or refusing to accept the same, the Court should only see that if such additional counter-statement is not accepted, the real controversy between the parties could not be decided. As noted hereinafter, by filing an additional counter-statement in the present case, in our view, would not cause injustice or prejudice to the respondents but that would help the Court to decide the real controversy between the parties. In our view, the High Court was, therefore, not justified in rejecting the application for permission to file additional counter-statement as no prejudice could be caused to the respondent which would otherwise be compensated in terms of costs."

15. The trial Court should not entertain the petition with long delay.

16. This Court is inclined to interfere with the order passed by the Court below in I.A.No.1 of 2020 in O.S.No.51 of 2019.

17. Accordingly, this Civil Revision Petition is allowed by setting aside the order, dated 05.07.2021 in I.A.No.1 of 2020 in O.S.No.51 of 2019 passed by the learned Subordinate Judge, Lalgudi. No Costs. Consequently, connected miscellaneous petition is closed.

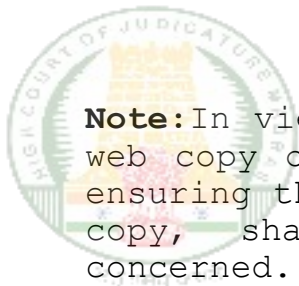
Sd/-

Assistant Registrar (CS-III)

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/ /2022

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.

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To

The Subordinate Judge,
Lalgudi.

+1 CC to M/s.H.LAKSHMI SHANKAR, Advocate (SR-10518[F] dated 08/03/2022)

+1 CC to M/s.N.DILIPKUMAR, Advocate (SR-10720[F] dated 08/03/2022)

C.R.P. (MD)No.1255 of 2021

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RD(21.03.2022) 5P 4C