



CRP(PD)(MD)No.1090 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 08.07.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

CRP(PD)(MD)No.1090 of 2017
and C.M.P.(MD)No.4789 of 2017

M.Natarajan

... Revision Petitioner

versus

1. P.S.Ramasamy Telugu Minority
Educational and Charitable Trust,
Through its Managing Trustee,
R.Solaisamy,
S/o. Ramasamy Naicker,
Door No.9E, N.P.S.N.Arumugam Road,
Sivakasi Town & Taluk,
Virudhunagar District.

2. Lakshmi

3. Palanivelu

Lingaiya (died)

4. Sakthimari

5. Sanjeevivelu
(R2 to R5 remained ex parte
before the trial Court)

... Respondents



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Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 09.01.2017 passed in I.A.No.61 of 2016 in O.S.No.212 of 2012 on the file of the District Munsif Court, Sivakasi.

For Revision Petitioner : Mr.D.Nallathambi
For R1 : Mr.A.Sivaji
For R2 to R5 : Ex parte

ORDER

This Civil Revision Petition is filed against the order dated 09.01.2017 passed in I.A.No.61 of 2016 in O.S.No.212 of 2012 on the file of the District Munsif Court, Sivakasi.

2. The revision petitioner is the plaintiff in O.S.No.212 of 2012 on the file of the District Munsif Court, Sivakasi. He filed the said suit for partition. In the suit, pleadings have been completed and P.W.1 was also examined and cross examined by defendants 1, 2, 4 and 5. When the case was posted for cross examination of P.W.1 by the sixth defendant, the sixth defendant has come forward with an interlocutory



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application in I.A.No.61 of 2016 for filing an additional written statement with certain new averments that there was a oral partition with regard to the property and pursuant to that, there was an oral sale also. The trial Court, by order dated 09.01.2017, allowed the said interlocutory application with cost of Rs.1,000/- , which was also deposited. Aggrieved over the same, the plaintiff/revision petitioner has preferred this Civil Revision Petition.

3. Mr.D.Nallathambi, learned counsel appearing for the plaintiff/revision petitioner submits that the suit was filed in the year 2012 and the first respondent/6thdefendant has also filed his written statement in the year 2013. Thereafter, when the suit was ripe for trial and that too after the cross examination by the defendants 1, 2, 4 and 5, the 6th defendant has come forward with the additional written statement with an inconsistent plea, which is not the stand taken by the other defendants. By filing this additional written statement, the 6th defendant has taken a plea that there was a oral partition with regard to



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the property, which is not a suit schedule property and based on that oral partition, there was an oral sale also. These are not admissible in a Court of law. However, in order to drag on the suit proceedings and to introduce a new cause of action, this additional written statement has been filed. However, without considering the necessity and reasons for filing this additional written statement, the learned trial Judge has mechanically allowed the said interlocutory application. Therefore, the same is liable to be set aside.

4. The learned counsel appearing for the revision petitioner has also relied upon the decision of this Court reported in **2019 (3) TNCJ 576 (MAD.)(MB) (Gangadurai vs. E.N.Palanichamy)**, wherein, it has been held that the inclusion of additional facts in the additional written statement would certainly prejudice the plaintiff, especially, when the additional written statement is permitted to be filed after the cross examination of plaintiff witnesses; new pleas in the additional written statement have been designed to overcome perceived weaknesses in the



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defence of the respondent/first defendant during the course of trial.

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5. Mr.A.Sivaji, learned counsel appearing for the 6th defendant/first respondent submits that though the suit was filed in the year 2012, the said interlocutory application was filed before the conclusion of the cross examination of P.W.1 and the 6th defendant is yet to cross examine the plaintiff and only at the time of preparing the cross examination of the plaintiff, they found that certain facts have been omitted to be mentioned in the earlier written statement filed in the year 2013, which can be included by way of additional written statement. Therefore, the said interlocutory application has been filed. He further submits that without pleadings, he cannot raise any ground during the trial and therefore, he must be permitted to file this additional written statement and accordingly, the learned trial Judge has also permitted the same. Therefore, there is no reason to interfere with the order of the trial Court.



6. The learned counsel appearing for the first respondent has also relied on the Judgment of this Court reported in **2005 (5) CTC 785** (*Muthusamy vs. Thangaraj*), wherein, it has been held as follows:

“9. In this case, the only grievance, if at all for the revision petitioner, as urged before me, must be that when P.W.1 was in the box, that too pending cross examination, subsequent pleadings should not be allowed. By allowing the subsequent pleadings, the right of the plaintiff is not going to be affected and it is for the defendant to prove the subsequent pleadings by letting in evidence, since the in the original written statement, he has opposed the claim of plaintiff. The plaintiff can also re-examine P.W.1, if he desires, with the permission of the Court, even to deny the allegations in the written statement. Thus, it is seen, ample opportunity is available to P.W.1, to deny or accept the case projected in the additional written statement, which would go to show, no prejudice would be caused to the plaintiff, though the suit is a part heard one. Order 8, Rule 9 C.P.C. does not say, after commencement of trial, no subsequent pleading shall be entertained by the Court, as



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said in Order 6, Rule 17, C.P.C. proviso.”

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7. This Court considered the rival submissions made.

8. The 6th defendant/first respondent herein has filed the above interlocutory application for filing additional written statement, when the suit was posted for cross examination of plaintiff-P.W.1. The 6th defendant/first respondent herein has taken a plea that certain facts with regard to the oral partition and oral sale have not been stated in the written statement and on oversight, it was found only at the time of preparing the cross examination of the plaintiff. Therefore, they have immediately filed the above interlocutory application along with the additional written statement. If the application is not allowed, the first respondent/6th defendant will be deprived from raising this plea in the suit. The admissibility of oral partition and oral sale are the subject matter, which have to be considered by the trial Court with the available evidence. Therefore, this Court is not inclined to interfere



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with the order passed by the learned trial Judge.

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9. Accordingly, the Civil Revision Petition is dismissed. However, the learned trial Judge is directed to give sufficient opportunity to the plaintiff for filing any reply to the additional written statement, if any and conclude the trial and dispose of the suit, within a period of eight months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No.

Internet : Yes / No.

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To

1. The District Munsif Court,
Sivakasi.



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B.PUGALENDHI, J.

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