



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.R.P.No.233 of 2023

and

C.M.P.No.1941 of 2023

1.Muthusamy

2.Perumayee

... Petitioners

Vs.

Vinayathan

... Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed in I.A.No.1 of 2020 in O.S.No.44 of 2019 on the file of the District Munsif cum Judicial Magistrate Court, Edappadi dated 12.10.2022.

For Petitioners

: Mr.C.Kulanthaivel



WEB COPY

C.R.P.No.233 of



ORDER

The civil revision petition has been filed against the fair and decreetal order dated 12.10.2022 passed in I.A.No.1 of 2022 in O.S.No.44 of 2019.

2. The revision petitioners are the defendants and the respondent instituted a Suit for permanent Injunction. The trial commenced in the Suit and plaintiff side witnesses were already examined. Admittedly, the Suit is posted for examination of defendants side witnesses. At this juncture, the revision petitioners filed an Interlocutory Application in I.A.No.1 of 2020 seeking permission to file additional written statement under Order VIII Rule 9 of the Code of Civil Procedure.

3. The revision petitioners by way of an additional written statement wanted to establish the circumstances relating to gift deed and its validity and genuinity. The gift deed was very much available even prior to the institution of the Suit by the respondents herein. While so, the revision petitioners ought to have filed the documents or their statement of defence in their written statement originally filed in the Suit. It is brought to the notice of the this Court that the revision petitioners have stated about their gift deed in the



written statement and therefore, they are bound to defend their case with reference to the statement already made in the written statement. Contrarily, they cannot file an Interlocutory Application after the commencement of the trial and more so, after completion of the plaintiff side witnesses.

4. The practice of developing the case stage by stage in a Civil Suit cannot be permitted by the Courts. Parties are expected to establish their cases through plaint, written statement, documents and evidences as the case may be, which all are to be filed as per the time limit or during the appropriate stage under the Code of Civil Procedure. The practice of filing Interlocutory Applications for reopening or for filing additional written statement cannot be permitted after commencement of trial and in the event of permitting such additional written statement at the later point of time, the same would cause prejudice to either of the parties, more so, would increase the longevity of the litigation, which is impermissible. The scope of Order VIII Rule 9 cannot be expanded for the purpose of granting permission to the defendants to file an additional written statement after commencement of trial.



5. Let us consider, the scope of Order VIII Rule 9, which contemplates that *“No pleading subsequent to the written statement of a defendant than by way of defence to set-off or counter-claim shall be presented except by the leave of the Court and upon such terms as the Court thinks fit; but the Court may at any time require a written statement or additional written statement from any of the parties and fix a time of not more than thirty days for presenting the same”*.

6. Therefore, after filing of the written statement, no pleading needs to be permitted except by way of defence to set off or counter-claim. However, if the Court in its discretion, if necessary in the interest of justice may permit by fixing time limit. Power of discretion is to be exercised judiciously and such exercise should not cause any prejudice to any of the parties. Therefore, rule is to raise all the grounds in the written statement and no additional pleading is to be permitted after commencement of trial. Only in exceptional cases, if the Court is of an opinion that such pleadings are required and in the interest of justice or vital for the purpose of deciding issues or Courts gets doubts regarding such issues, then alone the Court in its discretion may permit the parties to file such additional pleadings to the extent necessary and not



otherwise. The exception Clause in Order VIII Rule 9 cannot be expanded for the purpose of granting permission to file an additional written statement in all cases in a routine manner. Rule is no pleadings subsequent to the written statement. Exception is to grant permission only if the Court requires certain clarification or for removal of doubts. Thus, the discretion in this regard must be exercised cautiously and exceptionally.

7. The parties inadvertently omitting certain documents or points in the Suit may avail of the opportunity in the Appeal Suit if required. Contrarily any of the party to the Suit cannot be allowed to develop their case stage by stage, by filing Interlocutory Application after Interlocutory Application, which would prolong and protract the Suit proceedings and impermissible under the Code of Civil Procedure. Once the pleadings are completed and trial commenced, Court shall not permit any additional pleadings or otherwise, which is not permitted under the Code of Civil Procedure and in the event of any commission or omission by any of the parties they are solely responsible and such omission or commission may be filled up by them by way of an Appeal Suit, which is continuation of Suit, wherein, Court contemplates further opportunity to file additional documents or for the evidence. Thus, the



civil revision petition under Article 227 of the Constitution of India cannot be entertained by the High Court for the purpose of dealing with such orders passed by the Trial Courts declining permission to any of the party of the Suit for granting permission to file an additional written statement.

8. The scope of Article 227 cannot be expanded for the purpose of adjudication of such issues on merits in civil revision petition. When there is a regular Appeal available against the judgement and decree passed in a Suit and in the Appeal Suit parties are provided with further opportunity to adduce evidence or file additional documents, the power of High Court under Article 227 need not be exercised for the purpose of allowing the parties to develop their case at every stage and more so, after the commencement of trial in the Original Suit.

9. The Supreme Court neatly formulated the ambit of High Court's power under Article 227 in the case of ***Waryam Singh and another Vs. Amarnath and another*** reported in ***[AIR 1954 SC 215]***, in paragraph 14 at page 217, which reads as under:

“The power of superintendence conferred by



WEB COPY

C.R.P.No.233 of



Article 227 is, as pointed out by Harries C.J., in 'Dalmia Jain Airways Ltd. vs. Sukumar Mukherjee', AIR 1951 Calcutta 193 (SB) (B), to be exercised most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority and not for correcting mere errors.'

10. The Chief Justice Harries in the Full Bench decision in ***Dalmia*** case (cited *supra*) stated the principles on which the High Court can exercise its power under Article 227 very succinctly which would better, quote : “Though this Court has a right to interfere with decisions of Courts and tribunals under its power of superintendence, it appears to me that that right must be exercised most sparingly and only in appropriate cases. The matter was considered by a Bench of this Court in ***Manmathanath Vs. Emperor*** reported in [***AIR 1933 Calcutta 132***]. In that case a Bench over which Sir George Rankin C. J. presided held that Section 107, Government of India Act (which roughly 2 corresponds to Article 227 of the Constitution), does not vest the High Court with limitless power, which may be exercised at the Court's discretion to remove the hardship of particular decisions. The power of superintendence it confers is a power of a known and well-recognised character and should be exercised on those judicial principles which give it its



character. In general words, the High Court's power of superintendence is a power to keep Subordinate Courts within the bounds of their authority, to see that they do what their duty requires and that they do it in a legal manner.”

11. The power of the High Court under Article 227 is to be plenary and unfettered, but at the same time, the High Court should be cautious in its exercise. No doubt, when there is gross abuse of jurisdiction, the High Court can interfere under Article 227, whether there is gross abuse or not, is the factual aspect, which is to be considered in each case. Every case cannot be brought under the principles of gross abuse of jurisdiction.

12. Prolongation and protraction of Suits for years together at no circumstances be encouraged by the Courts. Adjournment is an exception, Court cannot grant adjournments in a routine manner and long adjournments are also to be avoided. Any party seeking adjournment on flimsy grounds is to be rejected at the threshold and genuine adjournments are to be granted only by recording reasons. In the event of filing Interlocutory Application on frivolous grounds, those applications are to be disposed of as expeditiously as possible and by imposing maximum cost. At the outset no party shall be



WEB COPY

permitted to drag on the proceedings to achieve their ill-motive directly or indirectly. All such attempts are to be thwarted by the Courts by hearing the cases in a consistent manner and without granting long adjournments, which will result in loss of continuity. Thus, consistent disposal of the cases by Courts in respect of the cases on its board is of paramount importance.

13. In the present case, admittedly, the trial commenced and the plaintiff side witness examinations were completed. The Suit is posted for examination of the defendant's side witnesses and thus, the Trial Court has rightly rejected the Interlocutory Application seeking permission for filing additional written statement in the Suit. Thus, the petitioners have not established any acceptable ground for the purpose of exercising the powers under Article 227 of the Constitution of India by this Court in the present civil revision petition.



14. Accordingly, the fair and decreetal order passed in I.A.No.1 of 2020 in O.S.No.44 of 2019 stands confirmed and consequently, the Civil Revision Petition in C.R.P.No.233 of 2023 is dismissed. No costs. Connected Miscellaneous Petition is closed.

06.02.2023

Jeni

Index : Yes

Speaking order

Neutral Citation : Yes

To

The Judge,
District Munsif Cum
Judicial Magistrate Court,
Edappadi.



WEB COPY

C.R.P.No.233 of



S.M.SUBRAMANIAM, J.

Jeni

C.R.P.No.233 of 2023

06.02.2023