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C.R.P. No.2649 of 2019



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.08.2023

CORAM:

THE HONOURABLE MR. JUSTICE V. LAKSHMINARAYANAN

C.R.P.No.2649 of 2019
and CMP.No.17497 of 2019

Duraisamy Gounder

... Petitioner

VS.

1.Dinakaran

2.Peramichi Gounder

... Respondents

PRAYER: Petition filed under Article 227 of the Constitution of India to set aside the fair and final order dated 21.07.2017 made in I.A.No.659 of 2016 in O.S.No.222 of 2010 passed by Additional District Munsif Court at Gingee.

For Petitioner : Mr.B.Jawahar

For Respondents : Mr.Rajarajan (for R1)

No Appearance (for R2)

ORDER

The learned trial Judge by an order in I.A.No.659 of 2016 in O.S.No.222 of 2010 dated 21.07.2017 has granted leave to file additional written statement under Order 8 Rule 9 of C.P.C. The learned counsel for the petitioner/plaintiff would allege that after 41 adjournments, the



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additional written statement has been filed and that too, after cross examination. He would state that once trial has commenced, the Court ought not to have granted permission. The learned counsel for the respondent would submit that it is only a leave which has been granted and no prejudice will be caused to the plaintiff, in case the statement is received in evidence.

2.I heard Mr.B.Jawahar, learned counsel appearing for the petitioner and Mr.Rajarajan, learned counsel appearing for the first respondent. I have also carefully perused the records.

3.All that has been done in the present case is that an additional statement that has been filed by the defendant has been taken on record. The rigors of Order 6 Rule 17 proviso regarding amendment, after commencement of trial, do not apply to Order 8 Rule 9. Leave under Order 8 Rule 9 is a discretionary order passed by the learned trial Judge, who had the benefit of seeing the witnesses before her. In this case, the learned trial Judge has exercised her discretionary power, which I cannot term as arbitrary and capricious. Therefore, I am not inclined to interfere with the order.

4.However, taking into consideration the plea made by the learned counsel appearing for the second plaintiff, when the matter has been



dragged on for 41 hearings for cross examination of the plaintiff alone, I feel a direction can be given to the trial Court to dispose of the suit at an early date. That will serve the ends of justice.

5. Accordingly, I pass the following order:

(i) CRP No.2649 of 2019 is dismissed and the order passed by the learned trial Judge is confirmed.

(ii) The learned trial Judge shall grant three (3) weeks time from today for the purpose of filing a reply statement by the plaintiff, if he so desires.

The suit should be completed and a report should be submitted to this Court on or before 31.03.2024. No costs. Consequently, connected miscellaneous petition is closed.

10.08.2023

Index : Yes/No
Speaking order/Non-speaking order
Neutral Citation : Yes/No
mjs/vs

To

The Additional District Munsif Court,
Gingee.



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V. LAKSHMINARAYANAN, J.

mjs/vs

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