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C.R.P.No.3373 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.07.2023

CORAM:

THE HONOURABLE Mr. JUSTICE V. LAKSHMINARAYANAN

Civil Revision Petition.No.3373 of 2019

and

C.M.P.No.22100 of 2019

V.Madeswari

... Petitioner

Vs.

P.Palanisamay

...Respondent

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and final order dated 10.09.2019 made in I.A.No.589 of 2018 in O.S.No.44 of 2015 on the file of the Sub Court, Uthangarai.

For Petitioner : Mr.P.Saravana Sowmiyan

For Respondent : Mr.V.Nicholas

ORDER

The law of procedure is not meant to punish a litigant. It has been developed over the centuries only for the purpose of ensuring that the litigation proceeds in a fair manner. Here is an unfortunate case, where the property which came to be vested with the sister has been used by one brother or the other.



2. The suit schedule property originally belonged to one Ponnusamy.

The said Ponnusamy settled the property in favour of the daughter/V.Madeswari, who is the revision petitioner herein. P.Palanisamy/ the respondent/plaintiff claims that V.Madeswari had executed a document in his favour settling it in its entirety to him. It is the further case that V.Madeswari had cancelled that settlement deed and had executed a settlement deed whereby each of the parties will be entitled to 1/3rd share.

3. Aggrieved by the cancellation of the settlement deed, the younger brother P.Palanisamy has presented the present suit for declaration and for consequential reliefs.

4. In this suit, V.Madeswari is said to have adopted the written statement filed by Venkatesan who is the second defendant. Subsequently, the suit went *exparte* and both the defendants filed an application to set aside the *exparte* decree. The *exparte* decree was set aside and the matter was posted for examination of P.W.1. At that stage, V.Madeswari's new counsel took note of the fact that she had not filed a separate written statement, but had adopted the written statement of the second defendant filed this application under Order 8 Rule 6 of C.P.C. The said application was



dismissed on the ground of wrong quoting of provisions of law.

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5. Order 8 Rule 6 of C.P.C., does not apply to the present the case. Be that as it may, quoting of wrong provision of law, does not mean that, the petitioner loses her right. Apart from that, she had pointed fingers to previous counsel to state that without her instructions, he had filed a written statement adopting the written statement of the second defendant. Today, she wants to file a separate written statement and contest her case. To that end, she filed I.A.No.589 of 2018, seeking the permission of the Court to file a written statement. The Court could have treated the present written statement filed by the party, as additional written statement and treated the application under Order 8 Rule 9 of C.P.C., or could have granted her permission to withdraw her adoption endorsement and received a new written statement. Neither course of action was adopted by the Court. The Court decided that she had not given complaint against her previous Advocate and had quoted wrong provision of law and therefore dismissed the application.

6. The purpose of filing the written statement is to bring forth to the Court, the defence that the parties take to the claim of the plaintiff. If V.Madeswari had already filed a written statement, then she could not be



permitted to rescind from the statement already filed. The records reveal that the counsel for the first defendant as well as the second defendant, were one and the same person.

7. Today, she wants to come forth with her version to the Court. Unfortunately that has been shut out using the Code of Civil Procedure as a tool of punishment, rather than the tool of fairness. The entire purpose of Civil Procedure Code as stated above, is for regulating the manner in which the suit has been disposed of. The principles of fairness and equity find a place in the Code. Processual Jurisprudence should not take away the rights of the party. There is no dispute that V.Madeswari was the original owner of the property on getting the property from Ponnusamy. The plaintiff claims the property on the basis of the document executed by her. Therefore, I feel interest of justice would be served if V.Madeswari is given an opportunity to file a separate written statement and contest her case.

8. It is always open to the plaintiff to confront V.Madeswari as regarding her stand which she had taken adopting the written statement of the second defendant and the stand she is taking today. This would balance the scales of justice rather than punishing the first defendant for the legal



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advise she had received at that time of filing an adoptive memo.

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9. Therefore, I am of the view, I.A.No.589 of 2018 has to be set aside.

The written statement filed by V.Madeswari has to be taken on record.

Issues, if necessary will be recast and the suit would be disposed of on merits. The suit being of the year 2015, priority should be given to the same and disposed of as expeditiously as possible in any event within a period of nine months from the date of receipt of copy of this order.

10. With the above observation and findings, Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

04.07.2023

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Index: Yes/No

Speaking Order: Yes/No



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V. LAKSHMINARAYANAN

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To

The Sub Court,
Uthangarai.

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04.07.2023
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