



WEB COPY

C.R.P.No.4194 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2023

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.R.P.No.4194 of 2022
and
C.M.P.No.21978 of 2022

Sheela @Monic

... Petitioner

Vs.

Narayanan

... Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order and decreetal order made in I.A.No.835 of 2021 in O.S.No.143 of 2018 dated 14.07.2022 on the file of III Additional District Judge, Puducherry.

For Petitioner

: Mr.N.Inbamaran
For Mr.R.Karthikeyan

For Respondent

: Mr.K.Shyam Sunder

ORDER

The Civil Revision Petition is filed to set aside the order dated 14.07.2022 passed in I.A.No.835 of 2021 in O.S.No.143 of 2018.



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2. The revision petitioner is the defendant and the respondent instituted a Suit for Specific Performance.

3. It is not in dispute between the parties that the trial had commenced and the plaintiff's side examination of witness was completed and defendant's side witnesses was also examined and cross-examined partly. While so, the revision petitioner / defendant filed an Interlocutory Application in I.A.No.835 of 2021 under Order VI Rule 17 to amend the written statement filed by the defendant in the Suit.

4. The Trial Court adjudicated the issues and made a finding that no amendment shall be allowed after commencing the trial, unless the Court comes to a conclusion that despite due diligence, party could not have raised the matter before commencement of trial. It is also a settled law that amendment could not be ordered, if it materially alters or substitute cause of action or the nature of claim applies to amendments of plaint, but such principle is not applicable to written statement.



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5.The defendant may take inconsistent stands, during the pendency of the Suit. As far as the present Suit is concerned, the plaintiff himself was examined as P.W-1 and he was cross examined by the defence counsel with reference to the averments made in the written statement.

6. It is not the case of the defendant that the plaintiff took the defendant and her husband to the registration office and the plaintiff obtained the sale agreement instead of mortgage. The petitioner has not filed any amendment application before commencing the Trial. Defendant has cross-examined the plaintiff's witness regarding the averments made in the written statement. Therefore, in the event of allowing the additional written statement at this stage would cause prejudice to the interest of the other party and thus, the Trial Court dismissed the Interlocutory Application.

7. This Court is of the considered opinion that the parties cannot be allowed to improve their case after commencement of trial and after examining the plaintiff's side witness. The Interlocutory Applications cannot be permitted to fill up the lacuna at every stage and the parties should



exercise due diligence to raise their grounds during the relevant point of time when the pleadings are filed.

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8. In the present case, with reference to the written statement examination and cross-examination of plaintiff's side witnesses were concluded and that being the factum, the Trial Court is right in dismissing the Interlocutory Application filed by the revision petitioner to amend the written statement.

9. This Court do not find any infirmity as the findings of the Trial Court is in consonance with the requirements as contemplated under Order VI Rule 17 of the Code of Civil Procedure. Accordingly, the order dated 14.07.2022 passed in I.A.No.835 of in O.S.No.143/2018 stands confirmed. Consequently, the Civil Revision Petition in C.R.P.No.4194 of 2022 stands dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

06.02.2023

skr

Index : Yes
Speaking order
Neutral Citation : Yes



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To

III Additional District Judge,
III Additional District Court,
Puducherry.



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S.M.SUBRAMANIAM, J.

skr

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