



C.R.P.No.3858 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.08.2023

CORAM

THE HONOURABLE Mr. JUSTICE V. LAKSHMINARAYANAN

C.R.P.No.3858 of 2019
and
C.M.P.No.25459 of 2019

S.Karthikeyan

...Petitioner/Defendant
/Petitioner

Vs.

Angaiah Ragi

...Respondent/Plaintiff
/Respondent

PRAYER: Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 19.09.2019 made in I.A.No.90 of 2019 in O.S.No.121 of 2019 on the file of the learned District Munsif -cum- Judicial Magistrate, Gummidipoondi.



C.R.P.No.3858 of 2017

For Petitioner : Mr.Vishnuvardhan
for Mr.A.E.Ravichandran

For Respondent : Served - No appearance

ORDER

This revision arises against an order dismissing the petition filed under Order 8 Rule 9 of the Code of Civil Procedure. The suit is for a bare injunction. The defendant filed his Written Statement, when the suit was pending before the learned District Munsif Court at Ponneri. Thereafter, the suit stood transferred due to the creation of the Court at Gummidipoondi. Therefore, this constrained the party to engage a new counsel. After engaging the new counsel, the petitioner filed an application under Order 8 Rule 9 of CPC in order to show that in addition to the trespass in the common passage, he is also entitled for the properties situated in Survey No.115/7 and New No.115/7A2.



He further wanted to allege that the property in Survey No.115/7AB belongs to his brother and himself. He also wanted to attach a rough sketch report to substantiate the same. This application was not opposed by the respondent. However, the learned Judge dismissed the application holding that change of counsel does not give right under Order 8 Rule 9 of CPC.

2.Heard Mr.Vishnuvardhan, for Mr.A.E.Ravichandran, learned counsel appearing for the petitioner. Though the respondent has been served there is no representation either in person or through pleader.

3.I have carefully perused the papers and the order impugned. The factum that the new counsel was engaged does not give a right to file a fresh additional written statement. However, it is not a case where the bundle was handed over when the case was pending before the District Munsif -cum-



Judicial Magistrate, Ponneri. It would have transpired that a new Court was created and therefore, the petitioner was constrained to engage a new counsel. In this case, he has not withdrawn the original Written Statement filed by him but had only taken additional defences by way of his additional statement. The application under Order 8 Rule 9 only seeks the leave of this Court, which is not as stringent as "*reasonable cause*" or "*sufficient cause*" as contemplated under Order 9 Rule 7 of CPC or under Section 5 of the Limitation Act.

4. When the suit is still open, the parties must be given full opportunity to address their case and put forward their best available defences. Even if the defences are contradictory, it is always open to the defendant to elect which one of the defences she wants to take at the time of trial. Furthermore, the suit is filed only for a bare injunction and the trial has not yet commenced in this matter. Taking the overall circumstances into



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consideration, the order passed by the learned District Munsif
-cum- Judicial Magistrate, Gummidipoondi, in I.A.No.90 of 2019
in O.S.No.121 of 2019 dated 19.09.2019 is set aside.

Accordingly, this Civil Revision Petition is allowed. No
costs. Consequently, connected Miscellaneous Petition is closed.

30.08.2023

Index : Yes/No
Internet : Yes/No
Speaking order / Non speaking order
mps

To

The District Munsif -cum- Judicial Magistrate,
Gummidipoondi.



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V. LAKSHMINARAYANAN, J.

mps

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