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C.R.P.No.215 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2023

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.R.P.No.215 of 2023
and
C.M.P.No.1749 of 2023

G.Dhavamani

... Petitioner

Vs.

1.Balasundari

2.S.Padma

3.R.Rajalakshmai

4.T.Kanyakumari

5.G.Thirumoorthy

6.Perumayee

7.Sundaravelu

8.Vasanthi

9.Amutha

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order dated 15.09.2022 made in I.A.N.o.1 of 2022 in O.S.No.36 of 2014 on the file of the Hon'ble II



Additional Sub-ordinate Judge Court, Salem and allow the said Interlocutory Application by allowing the above CRP.

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For Petitioner : Dr.S.Padma

ORDER

The Civil Revision Petition has been filed against the fair and decreetal order dated 15.09.2022 made in I.A.N.o.1 of 2022 in O.S.No.36 of 2014 pending on the file of the II Additional Sub-ordinate Judge Court, Salem.

2. The revision petitioner is the plaintiff, who instituted a suit for Partition. The suit instituted in O.S.No.36 of 2014 is pending for the past about 8 years. The plaintiff side evidence was closed on 26.11.2019 and thereafter, the suit was posted for defendants side evidence. Subsequently, the 5th defendant was examined as D.W.1 and his cross-examination by the plaintiff was also concluded. The case was further posted for examination of defendants side witnesses and at the last stage, the revision petitioner/plaintiff filed an Interlocutory Application in I.A.No.1 of 2022 under Order 8 Rule 9, seeking the relief to receive the reply statements on the side of the plaintiff.



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3. The learned counsel for the revision petitioner mainly contended that all the relevant documents were marked. However, there is no specific pleading in the plaint in respect of those documents, which were marked. Thus, it necessitated for the plaintiff to file an additional reply statement after examination of plaintiff side witnesses.

4. The learned counsel for the revision petitioner articulated by stating that it is only a reply statement, referring the documents already marked and thus, it will not create a new case as far as the plaintiff is concerned and therefore, the trial Court committed an error in dismissing the Interlocutory Application filed by the revision petitioner.

5. Let us now consider the scope of Order 8 Rule 9 of C.P.C., Rule 9 of C.P.C., denotes '*Subsequent pleadings*' and enumerates "*No pleading subsequent to the written statement of a defendant other than by way of defence to set off or counterclaim 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.*"



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6. Thus, no pleading is permissible subsequent to the filing of the written statements of the defence to set off claim or counter claim. Therefore, after written statement, no pleading is to be entertained by the Court concerned under Order 8 Rule 9 of C.P.C., But, the Court at any time, if require an additional written statement from any of the parties, then time may be fixed not more than 30 days for the purpose of presenting such written statement or additional written statement.

7. The spirit of Order 8 Rule 9 of C.P.C., unambiguously enumerates that no additional written statement at the instance of the parties to be entertained, unless the Court is of an opinion that such written statement is to be entertained for the purpose of effective adjudication of suits and in such circumstances, the Court has to fix the time limit of not more than 30 days. It is not as if the parties at their choice filed written statement or additional written statement at any stage of the suit.

8. Order 7 Rule 3 contemplates “*Where the subject matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it, and, in case such property can be*



*identified by boundaries or numbers in a record of settlement or survey,
the plaint shall specify such boundaries or numbers.”*

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9. Plaint must contain all the descriptions and the details regarding the immovable properties for effective adjudication of the suit. Once the plaint was taken on file and the defendants in the suit filed their written statement, thereafter, there cannot be any subsequent pleadings to the written statement filed by the defendants other than by way of set off or counter claim.

10. In the present case, there is no such counter claim or otherwise. Thus, subsequent reply statement at the instance of any of the parties are impermissible under Order 8 Rule 9 of Civil Procedure Code. If at all the Court gets certain doubts or require clarifications, then the Court can ask the parties to file an additional written statement by fixing the time limit, not more than 30 days under Order 8 Rule 9 of C.P.C., Therefore, the Code of Civil Procedure does not contemplate or permit any party to file reply statement or additional written statement, after commencement of trial or at the fag end of the suit. If such course is permitted, it will pave way for unnecessary complications in deciding the case and the parties would make an attempt to develop their case at each state by filing additional documents



or filing additional written statement or reply statements as the case may be.

The parties if allowed to develop their cases in such a manner, the suit will not come to an end and for each such reply statement or additional written statement, opportunity is to be afforded to the other party, who may also file further reply statement or otherwise and such a procedure is unknown to the Civil Procedure Code and thus, the petitions filed under Order 8 Rule 9 of C.P.C., cannot be entertained beyond the scope of the spirit of Order 8 Rule 9 of C.P.C.

11. In the present case, the trial Court considered the grounds raised by the revision petitioner and found that the trial is in fag end and posted for the examination of the defendants side witnesses and more so, DW1 was already examined and cross-examined. Therefore, the Court formed an opinion that such reply statement is filed by the revision petitioner/plaintiff to fill up the lacuna and this Court do not find any infirmity in respect of the finding made in this regard.

12. That apart, Order 8 Rule 9 of the Civil Procedure Code does not permit such reply statement at the fag end of the suit and thus, this Court is of the considered opinion that any such reply statements filed at the fag end



of the suit cannot be entertained, which would cause unnecessary prejudice to the other party and any of the parties to the suit cannot develop their grounds or points in such a manner at stage by stage, which is impermissible.

13. Thus, the fair and decreetal order dated 15.09.2022 made in I.A.N.o.1 of 2022 in O.S.No.36 of 2014 pending on the file of the Hon'ble II Additional Sub-ordinate Judge Court, Salem stands confirmed and consequently, the Civil Revision Petition in C.R.P.No.215 of 2023 is dismissed. No costs. Connected miscellaneous petition is closed.

03.02.2023

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Index : Yes
Speaking order
Neutral Citation : Yes

To

The II Additional Subordinate Judge,
Salem.



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S.M.SUBRAMANIAM, J.

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