



C.R.P(MD)No.974 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **13.06.2023**

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.R.P(MD)No.974 of 2022

and

C.M.P.(MD)No.8959 of 2022

RM.Ramasamy

...Petitioner/1st Respondent/Plaintiff

Vs.

1.Radhakrishnan
2.Rajendhran
3.Ulagi
4.Manickam @ Channamani
5.Radha
6.Jayalakshmi
7.Vellaiyammal

...Respondents 2 to 7 /Respondents 2 to 7 /Defendants 1, 3 to 7

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order of the learned III Additional District Judge, Tiruchirappalli made in I.A.No.4 of 2021 in O.S.No.76 of 2014 dated 20.01.2022.

For Petitioner : Mr.K.K.Senthil

For Respondent : Mr.K.Baalasundharam, Senior counsel
For Mr.R.Paranjothi

ORDER

The petitioner is aggrieved by the impugned fair and decreetal



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order dated 20.01.2022, in I.A.No.4 of 2021 in O.S.No.76 of 2014, passed by the learned III Additional District Judge, Tiruchirappalli.

2.I.A.No.4 of 2021 was filed under Order 8 Rule 9 of CPC for receiving additional written document. By the impugned order, the III Additional District Court, Tiruchirappalli has allowed the prayer of the first respondent herein (second defendant in the above suit) with the following observation:

“6.Point:

The petitioner has filed the petition to receive the additional written statement. Admittedly the respondent has filed the suit for partition. In the written statement itself the petitioner has stated that the suit is bad for partial partition. The alleged will of Ramasamy has been denied in the written statement. In the additional written statement, properties which were omitted in the plaint have been listed. The contents of additional written statement are not inconsistent to the earlier statement. The additional written statement particulars are continuation of the earlier statement. They cannot be considered as filling up the lacuna. Partition suit is concerned both properties must be treated in equal footing. Hence, the objections of the respondent are not acceptable.

7. The learned respondent Counsel submitted a citation of the Honourable High Court of Judicature at Madras delivered in CRP(PD) No.214 of 2014 on 08.12.2016 in K. Sheela Rani Vs. Nayagam and others where in para 17 reads as follows:



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"In the above decision, this court held that Order 8, Rule 9 C.P.C does not say that no application for receiving the additional written statement should be allowed after the trial has commenced and Under Order 8, Rule 9 C.P.C., wide discretion is given to the court to give a chance to the parties to agitate their rights even raising court to give a chance to the parties to agitate their rights even raising subsequent plea for which the court should not be rigid and the court should exercise their discretion liberally when it does not affect the rights of the parties."

According to the above citation the court can receive additional written statement at any stage. If the additional written statement is against the earlier pleadings, it can be rejected. As already stated the petitioner has filed the additional written statement in consonance with the earlier statement. Hence, reason stated to receive the additional written statement is acceptable and the petitioner is deserved to the petition relief.

7. Consequently, the petition is allowed and ordered to receive the additional written statement."

3.The petitioner is the plaintiff before the III Additional District Court, Tiruchirappalli in O.S.No.76 of 2014. The petitioner has filed the above suit for partition of the suit schedule property.

4.After the commencement of trial and after examination of P.W.1, the first respondent herein filed I.A.No.4 of 2021 under Order 8 Rule 9 of CPC for receiving the additional written document.



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5.The learned counsel for the petitioner submits that the suit is of the year 2014 and the defendants 1, 3 to 7 had also remained exparte and they were set exparte on 23.12.2014. It is further submitted that the defendants 1, 3 to 7 remained exparte. The first respondent herein filed I.A.No.4 of 2021, in the year 2019, after the trial commenced and after P.W.1 was examined and cross examined and after chief examination of P.W.2 was partly over. It is submitted that although the powers are vested with the Court to receive additional written statement under Order 8 Rule 9 of CPC, such relief can be granted only for sufficient cause. It is submitted that dealing with some of the similar situation, this Court in the case of **Murthi Gounder v. Karupanna Gounder** reported in **AIR 1976 Mad 302**, held that the defendants having filed written statement cannot file an application for filing additional written statement after two years. Reference is made to the following paragraph, which reads as under:

“This is a case where nearly two years after having filed his written statement, the first defendant had acquired some further information and wanted to set up a case which is different from the case which he had originally set up in his written statement. Considering the stage at which such an application has been filed undoubtedly, prejudice would be caused to the plaintiff who will now be forced to file reply



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statement and as a consequence thereof, fresh and different issues will have to be framed and the trial would have to begin once over again. Taking these circumstances into consideration, I am of the view that the learned District Munsif rightly refused to permit the revision petitioner to file the additional written statement. I see no ground to interfere. The petition is therefore, dismissed.”

6.The learned counsel for the petitioner has also place reliance on the decision of this Court in the case of **K.Marimuthu v. R.Easwaramurthi in C.R.P.(MD)No.1089 of 2021**, wherein this Court has held as follows:

“The above Rule would clearly provide that no application for amendment shall be allowed after the commencement of trial. On going through the typed set of papers, it is clear that trial has commenced and the revision petitioner had also cross examined the respondent/plaintiff. At this juncture, if the claim of the revision petitioner to file additional written statement is allowed it would affect the trial and the trial Court ought to frame new issues based on the new facts introduced by the revision petitioner would cause great prejudice to the respondent/plaintiff.”



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7. That apart the learned counsel for the petitioner further submitted that by virtue of amendment, the first respondent herein/second defendant/petitioner in I.A.No.4 of 2021 has sought to include several properties, which are not part in the above suit. That apart it is submitted that three of the properties are in the name of the third defendant/third respondent herein and that the third respondent, who is the mother of the contesting parties is still alive and therefore, the property cannot be included for partition. It is further submitted that during the pendency of the suit, the rest of the respondents were set exparte. The parties had also entered into compromise to partition the property in terms of the registered Will dated 09.11.2000, executed by Late Ramsamy Devar, who passed away on 20.06.2001. However, after filing the written statement on 31.03.2015, the first respondent decided to file I.A.No.4 of 2021 on 05.03.2021 for receiving additional written statement. It is submitted that the purpose of filing I.A.No.4 of 2021 by the first respondent was only to delay in getting the rights of the petitioner herein and delay the disposal of O.S.No.76 of 2015 filed by the petitioner herein for partition of the suit schedule property, pursuant to the registered Will dated 09.11.2000, after the death of the father of the petitioner and the father of the rest of the respondents, after husband of



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the third respondent. It is further submitted that in the written statement dated 31.03.2015, the first respondent had taken contradictory stand in paragraph no.3. The first respondent has disputed the genuinity of the registered Will dated 09.11.2000, which is said to be executed by late Ramasamy Devar, and whereas in paragraph no.7 the first respondent has admitted to equal rights of the petitioner, the first respondent and the second respondent herein. Thus the first respondent herein has tastily admitted the Will dated 09.11.2000. It is submitted that B schedule property was also acquired by the Government for National Highway project. 1/3rd of the share has been received by the first respondent and also by the petitioner and the second respondent. Thus the purpose of filing I.A.No.4 of 2021 was also to defeat the rights of the petitioner herein.

8.Per contra the learned Senior Counsel appearing for the respondents/defendants would submit that the impugned order passed by the learned Additional District Judge is well reasoned and does not require interference. I.A.No.4 of 2021 was although filed belatedly, it was not intended to delay the disposal of O.S.No.76 of 2014. It is submitted that nevertheless the delay there has to be finality of inter-se



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right of the parties as the suit is filed by the petitioner was for partition.

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9.It is submitted that the partition cannot be its part. It has to be holistic. That apart it is always open for the petitioner to file additional reply statement to the additional written statement filed by the first respondent. Therefore, the civil revision petition is liable to be dismissed. Finally the learned Senior counsel contended that there is no final determination for the inter-se right of the parties by merely allowing the petition under Order 8 Rule 9 of CPC.

10.The learned Senior Counsel submitted that only inconsistent and contradictory allegations in negation to the admitted position of facts or mutually destructive allegations of facts should not be allowed to be incorporated by means of amendment to the pleadings. Whereas this is not the case. He place reliance on the judgment of this Court in the case of Soundarajan and another v. Vijayalakshmi in C.R.P.(MD)No.4730 of 2014.

11.The learned Senior Counsel submitted that leave to file additional written statement is to be granted liberally except when the



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defendant raises a mutually destructive pleas and when he tries to introduce altogether a new case. He place reliance on another judgment of this Court in the case of S.Suresh v. Sivabalakannan and others in C.R.P.(MD)No.700 of 2005.

12.I have considered the arguments advanced by the learned counsel for the petitioner and the learned Senior Counsel for the respondent.

13.The first respondent was negligent in not filing I.A.No.4 of 2021 earlier for filing additional written statement. The suit was filed by the petitioner to partition the suit in 2014. The trial Court is required to bring a final closure of dispute between the parties. In a partition suit, the trial Court has to draw curtain, so that all issues are decided once for all and there is no scope for ambiguity in future.

14.The first respondent however having allowed the trial to commence and having filed I.A.No.4 of 2021 for receiving additional written statement only on 05.03.2021 has to pay costs. The Court ought to have awarded cost while the Court below has not awarded.



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15.Considering the above, I do not wish to interfere with the impugned order passed by the learned III Additional District Judge, Tiruchirappalli. However awards of costs to the petitioner by the first respondent herein. The first respondent to pay a sum of Rs.25,000/- to the petitioner within a period of four weeks from the date of receipt of copy of this order.

16.Only subject to such compliance by the first respondent herein and reporting compliance before the III Additional District Judge, Tiruchirappalli, additional written statement filed by the petitioner shall be taken on file. The petitioner shall file reply statement if any within a period of four weeks thereafter. The III Additional District Court, Tiruchirappalli shall frame additional issues if any and allow the first respondent to let in additional evidence. The III Additional District Court, Tiruchirappalli shall endeavour to dispose O.S.No.76 of 2014 as expeditiously as possible preferably within a period of nine months from the date of receipt of copy of this order.



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17.The Civil Revision Petition is with the above observation.

Consequently, connected miscellaneous petition is closed.

13.06.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
Mrn

To

1.The Sub Judge, Srivilliputhur.

2.The Section Officer
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.SARAVANAN,J.

Mrn

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