



C.R.P.(MD)No.1931 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 31.07.2023

CORAM:

THE HONOURABLE **MR.JUSTICE C.KUMARAPPAN**

C.R.P.(MD)No.1931 of 2018

and

C.M.P.(MD)No.8420 of 2018

Palaniammal

... Petitioner / Petitioner / 3rd Defendant

Vs.

Karuppaiah (Died)

1.Nallammal

2.Dhanabalan

3.Dinakaran

4.Sumathi

5.T.Kannagi

6.Algammal

7.Sarojini

8.Sankar

9.Sagunthala

10.Gomathi

11.Panneerselvam

12.Selvi

13.Nallathambi

... Respondents/ Respondents 2 to14 /

Plaintiffs 2 to 14



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Prayer : Civil Revision Petition filed under Section 115 of the Civil Procedure Code, against the fair and decretal order, dated 19.03.2018, passed in I.A.No.210 of 2018 in O.S.No.464 of 2008 on the file of the Principal District Munsif, Dindigul.

For Petitioner : Mr.M.P.Senthil

For Respondents : Mr.H.Lakshmi Shankar

ORDER

The instant Civil Revision Petition has been filed against the order, dated 19.03.2018, passed in I.A.No.210 of 2018 in O.S.No.464 of 2008 on the file of the Principal District Munsif, Dindigul. The revision petitioner herein is the third defendant.

2. The short facts, which give rise to the instant Revision Petition, are as under:

The plaintiffs have filed the suit for the relief of declaration that the suit properties belong to the plaintiffs, and for permanent injunction against her sisters. In the said suit, the third defendant has filed a written statement, and disputed the execution of the Will stands in the name of the plaintiffs. They have also pleaded that in view of the Foreign Exchange



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Regulation Act, and Foreign Exchange Management Act, and that the plaintiffs being the Citizens of the Singapore, they cannot have any right to hold or own any immovable property in India. Therefore, the defendants contends that, they alone are entitled to have a share in the suit property. While that being so, they have filed an application seeking leave of the Court to receive the additional written statement on the ground that, since the written statement was hurriedly prepared, some of the important points were omitted to be raised. Hence, they prayed to seek leave of the Court to file additional written statement.

3. The said application was stoutly objected by the respondents / plaintiffs, on the ground that the defendant has raised mutually destructive plea and that though the suit is part heard stage and is pending for cross examination of the plaintiff's witnesses, instead of cross examining the witnesses, she filed the instant application to prolong the litigation.

4. After considering the either side submission, the learned trial Judge, found that the additional written statement consists of a contrary pleading. Hence, dismissed the application.



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5. Aggrieved with the order of the learned trial Judge, the petitioner / third defendant has come up before this Court with the instant Revision Petition.

6. The learned counsel for the petitioner would submit that an application under Order 8 Rule 9 of C.P.C has to be liberally considered and that the defendant is entitled to take inconsistent pleas as long as it is not mutually destructive, and that they would further submit that by this additional written statement, they are not withdrawing any of the admission made in the written statement. Therefore, prayed to allow the application.

7. The learned counsel for the petitioner relied upon the judgment of this Court reported in 2007-5-CTC-722 (Muthuraman V. Muthukumaran). The relevant portion of the judgment is as follows-

“7. The object of filing of additional written statement is to supply what might have been omitted in the written statement filed earlier and the additional written statement can be allowed, if it is not likely to cause prejudice to the plaintiff. The Court should grant permission to the defendant for filing subsequent pleadings if they are so



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relevant to prove the facts placed before the Court by the defendant, which cause no prejudice to the plaintiff even in the absence of any claim or set off or counter claim. In the instant case, the plea of the petitioner was denial of execution of the promissory note and the averments made in the additional written statement that he was away on the date, when the the said promissory note was alleged to have been executed is only supplementary and does not introduce a new case other than what was pleaded earlier. By filing an additional written statement to supplement the pleadings, no prejudice would be caused to the plaintiff and therefore, the lower Court ought not to have dismissed the petition on the ground of delay.”

8. The learned counsel for the petitioner also relied upon the judgment of the Hon'ble Supreme Court reported in **2009-7-MLJ-1081 (SC) (Olympic Industries V. Mulla Hussainy Bhai Mulla Akberally and others)** . Wherein it is held that if allowing of an application to receive the additional written statement, would help the Court to decide the real controversy between the parties, the same has to be allowed.



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9. The learned counsel for the petitioner also relied upon the judgment of the Hon'ble Supreme Court reported in **2001-8-SCC-97 (Estralla Rubber V. Dass Estate (P) Ltd.,)**. Wherein, the Hon'ble Supreme Court has held that the delay cannot be a ground for rejection of the application, unless serious prejudice would cause to the other party. The relevant portion of the judgment is as follows-

“5. We have considered the submissions made on behalf of either side. The High Court set aside the order passed by the learned District Judge stating that the proposed amendment will have the effect of displacing the plaintiff from admission made by the defendant in its petition filed under Sections 17(2) and 17(2A) of the Act and that such admission could not be permitted to be withdrawn. We have perused the relevant records including the original application and the proposed amendments. We are not able to see any admission made by the defendant as such, which was sought to be withdrawn. By the proposed amendment the defendant wanted to say that Ala Mohan Das was a permissive occupier instead of owner. The further amendment sought was based on the entries made in the revenue records. It is not shown how the proposed amendment prejudiced the case of the plaintiff. It is also not the case of the plaintiff that any accrued right to it was tried to be taken away by the proposed amendment. The proposed



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amendment is to elaborate the defence and to take additional plea in support of its case. Assuming that there was some admission indirectly, it is open to the defendant to explain the same. Looking to the proposed amendments it is clear that they are required for proper adjudication of the controversy between the parties and to avoid multiplicity of judicial proceedings. The High Court also found fault with the defendant on the ground that there was delay of three years in seeking amendment to introduce new defence. From the records it cannot be said that any new defence was sought to be introduced. Even otherwise, it was open for the defendant to take alternate or additional defence. Merely because there was delay in making the amendment application, when no serious prejudice is shown to have been caused to the plaintiff so as to take away any accrued right, the application could not be rejected. At any rate, it cannot be said that allowing amendment caused irretrievable prejudice to the plaintiff. Further, the plaintiff can file his reply to the amended written statement and fight the case on merits. The impugned order passed by the High Court exercising jurisdiction under Article 227 of the Constitution to set aside the order passed by the learned District Judge in revision under Section 115A of the CPC allowing the amendment application filed by the defendant, is patently erroneous and unsustainable. In the impugned order the High Court observed that the order of the learned



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District Judge was apparently wrong but in our view it is otherwise. ”

10. He also relied upon the judgment of this Court reported in **2009-5-CTC-29 (John C.Christian and another V. R.Adhikesavan)**. The relevant portion of the judgment is as follows-

“22. While considering the application for permitting the respondents to file additional written statement, the background facts of this case is also to be taken into consideration. Originally, the respondents were represented by a counsel who filed written statement. According to the respondents, the said counsel has only reproduced the contents of the reply notice in the written statement and the details with regard to the transaction to which the respondents were parties were omitted to be mentioned in the written statement originally filed.

23. It is also found that the counsel for the respondents failed to cross examine the witness on the side of the revision petitioners. The fact that the earlier counsel was not prepared to give change of vakalat is also evident by the fact that it was only as per the order in Application in A. No. 738/2007 dated 25.04.2008, the vakalat in favour of the earlier counsel was revoked. The respondents are admittedly villagers and the fact has not been denied by the revision



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petitioners. It is true that the respondents have to take responsibility for the statements made earlier in the written statement. However, even in the additional written statement they were not disowning the statement made in the written statement originally filed. The attempt was only to supplement certain other details with respect to the transaction relating to the suit property. The question would be different in case, the respondents were taking a self-destructive defence by way of supplementary pleadings. A conjoint reading of the written statement originally filed as well as the additional written statement would clearly show that the attempt was only to furnish better particulars and the other related transactions and it was not an attempt to resile from the admission already made in the written statement originally filed.”

(Emphasise supplied by this Court)

11. He also relied upon the judgment of this Court reported in 2010-5-CTC-198 (**S.Sathish V. Dr.Sumathi**). The relevant portion of the judgment is as follows-

“ 15. In the written statement, originally filed by the revision petitioners, they admitted the execution of the power in favour of the 4th respondent. In the additional written statement, they have taken the plea that the 4th respondent played fraud on them and after the death of their father, the 4th



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respondent was taking care of them and they trusted the 4th respondent and executed a power in his favour and the 4th respondent took advantage of the power sold the 3rd item in favour of the 5th respondent for a lesser consideration, though the property is worth more than 17 lakhs and the sale is not valid under law and they are not bound by the same. It is further admitted that while plaintiffs witnesses were examined, no such plea was taken as claimed in the additional written statement. Even, while filing the proof affidavit, the first defendant did not take such stand and only after the case was posted for the cross examination of the first defendant, the 1st defendant has come forward with the application for receipt of the additional written statement and has taken a different stand in respect of the 3rd item of the property and in the additional written statement, he also questioned the competency of the 4th respondent to execute the sale deed and also made allegations against the 4th defendant. In such circumstances, we will have to see whether such application for filing additional written statement can be permitted. It is settled principles of law that in the written statement, the defendant is entitled to take mutually inconsistent plea and he is not permitted to take mutually destructive plea. Further, in the additional written statement though the defendant is entitled to take inconsistent plea, he is prohibited from introducing a new case or taking a mutually destructive plea. Further, the Courts have held that the



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Courts must be liberal in receiving the additional written statement and the principles, which govern the amendment of written statement should not be imported in the case of receipt of the additional written statement. In the case of amendment of written statement, if the defendant wants to erase or delete admission or statement made in the original statement and introduce a new set of facts by which the benefits accrued to the parties by reason of the admission made by the defendants in the original written statement is taken away and therefore, in such circumstances, the Courts have held that when by reason of the amendment of the written statement, the admission made by the defendants are sought to be erased and a new case is put forward that should not be allowed.

17. In this case also, the earlier admission made by the revision petitioners in the original written statement are kept intact and in the additional written statement, they also admitted the execution of the document in favour of the 5th respondent, but only have taken a new plea that the 4th respondent has played fraud on them and sold the property in favour of the 5th respondent.

.....

24. It is further held in that judgment that in the case of amendment of written statement, the Courts are inclined to grant liberty in allowing the amendment of written statement than of plaint and inconsistent plea can be raised by the defendants in the written statement. Therefore, from the



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above principles laid down by the Honourable Supreme Court and our High Court it can be inferred that even in the case of amendment of written statement, the Courts have held that liberal approach must be taken. As stated supra, in the case of receipt of additional written statement, the admission made earlier is not wiped out and is going to be kept intact and therefore, even though a different stand is taken in the additional written statement, no prejudice will be caused to the plaintiff. Further, it is made clear from the aforesaid judgments, additional written statement or amendment of written statement cannot be allowed, when it causes serious prejudice to the plaintiffs or irretrievable damage will be caused to the plaintiffs by allowing such application.“

(Emphasise supplied by this Court)

12. The learned counsel for the petitioner also relied upon the judgment of this Court, reported in **2016-1-LW-862 (Subbaiah V. Velu @ Velappan)**. Wherein, the learned Single Judge of this Court has held that an additional written statement can be permitted to be filed, even at the stage of cross examination.

13. The learned counsel for the petitioner also relied upon the judgment of the Hon'ble Supreme Court reported in **2008-7-SCC-85**



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(Gautam Sarup V. Leela Jetly and others). The relevant portion of the judgment is as follows-

“28. What, therefore, emerges from the discussions made hereinbefore is that a categorical admission cannot be resiled from but, in a given case, it may be explained or clarified. Offering explanation in regard to an admission or explaining away the same, however, would depend upon the nature and character thereof. It may be that a defendant is entitled to take an alternative plea. Such alternative pleas, however, cannot be mutually destructive of each other.”

(Emphasise supplied by this Court)

14. Therefore, what emerges from the above precedents are that if the additional written statement contains an explanation with regard to an admission and supplementing certain other details, though the same is inconsistent plea such an application has to be allowed liberally as long as such plea is not mutually destructive. Further the additional written statement can be received even at the part heard stage.

15. However, the learned counsel for the respondent would submit that the petitioner has withdrawn the admissions made in the



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written statement, through this additional written statement. In support of his case, he also relied upon following judgments:

- (i) **1976-4-SCC-320 (Modi Spinning & Weaving Mills Co.Ltd., V. Ladha Ram & Co.)**
- (ii) **1998-1-LW-340 (Heeralal V. Kalyan Mal)**
- (iii) **1998-2-CTC-94 (N.Srinivasan V. Muthammal)**
- (iv) **2008-4-MLJ-468 (SC) (Gautam Sarup V. Leela Jetly)**

16. But, the above judgments are in respect of Order 6 Rule 17 C.P.C.. Wherein, when the defendant filed an application to delete certain pleadings of the written statement and when wanted to include certain new pleadings that was rejected by the Hon'ble Supreme Court.

17. The learned counsel for the respondents would also refer the judgment of this Court reported in **1976-1-MLJ-286 (Murthi Gounder V. Karuppanna Gounder)**. Wherein, it was held that when prejudice caused to the plaintiff, then the application is to be rejected. But, this Court could not find any manifest prejudice against the plaintiff.



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18. The learned counsel for the respondents would invite the attention of this Court in respect of Order 6 Rule 7, and would contend that no new ground or claim which contains an allegation or fact inconsistency to previous pleadings cannot be taken. The learned counsel rely upon following two judgments,. (i) a judgment of the High Court of Lahore reported in *AIR-1943-Lah-159 (Hardial Singh and others V. Sardarni Jaswant Kaur)* and (ii) another judgment of the High Court of Andhra Pradesh reported in *AIR-1963-AP-9 (Kuppa Viswapathi V. Kuppa Venkata Krishna Sastry)*. On a close reading of the above two judgments, it deals about the plaint pleadings, and the same do not speak anything about the written statement.

19. At this juncture, the learned counsel for the petitioner would rely upon the judgment of the High Court of Kerala at Ernakulam reported in *2022-SCC-Online Ker-4226 (Reghunathan Nair V. Bobby A.Thomas)*.

The relevant portion of the judgment is as follows-

“18. An analysis of the O.6 R.17 and O.8 R.9 of the Code and the interpretation given in the above precedents, makes it abundantly clear that the two provisions are contextually different. The principal object behind permitting



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subsequent pleading is to supplement what has been inadvertently omitted or to clarify or elaborate on the facts on record. In any case, an application filed under O.8 R.9 of the Code cannot be equated with one filed O.6 R.17. This view stands fortified by the fact that even though a proviso was added to O.6 R.17 of the Code, by way of Act 22 of 2002, to put an end the practice of filing applications for amendment of pleadings after the commencement of trial, no such restriction is imposed under O.8 R.9 by way of the same amendment. Hence, the argument of Sri.P.B.Krishnan that both the above provisions are controlled by O.6 R.7 of the Code is untenable. I fully concur with the well-settled view of this Court in Baby v. Sebastian (supra) that an additional written statement can be filed, with the leave of the court, to clarify or elaborate on the contentions on record.”

(Emphasise supplied by this Court)

20. As per the above ruling, it is very much clear that the rigour of Order 6 Rule 17 C.P.C. will only be applicable to the plaint pleading and not to the additional written statement. Therefore, as rightly submitted by the learned counsel for the petitioner, the defendant can seek leave of this Court, to clarify and elaborate their defence.



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21. Now, let us consider the case in hand, with the touch stone of this above precedents.

22. To object this application, the submission put forth by the learned counsel for the respondents is that, when the defendant had accepted in the written statement that the suit property belonged to father and mother of the defendant, in the additional written statement they introduce a new plea that their father alone purchased the property in the name of their mother. He would further submit that in the earlier written statement, when the defendants have pleaded that they are the co-owners. Contrary to the same, in the additional written statement, they pleaded that their mother has no right. It is also pleaded that contrary to the written statement, they pleaded that the defendant's father and three sons constituted a joint Hindu Family and that all the defendants and the plaintiffs are the joint family members.

23. The sum and substance of the learned counsel for the respondents submission is that the defendant has withdrawn the admission made in the written statement. This Court is not in a position to accept the



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submissions raised by the learned counsel for the petitioner. Because, when the written statement is in the file and when no amendment was sought for in the written statement, the question of withdrawing the admission does not arise. Further, the pleading in the additional written statement are in the nature of putting forth certain other particulars which has nexus with the written statement. Further while conjointly reading the written statement and the proposed additional written statement, this Court could not find any mutually destructive pleas. As held in the various precedents mentioned elsewhere in the order, the application to receive additional written statement has to be liberally considered, unless there is mutually destructive pleas.

24. Here, though the suit is in the part heard stage, now, the plaintiff's first witness in the box. The P.W.1 is yet to be cross examined. Therefore, on permitting the defendant to file the additional written statement, the same would in no way prejudice the defendant, as they could very well confront the P.W.1 during cross examination, even in respect of the pleadings contained in the proposed additional written statements. However, the conduct of the defendant in filing the application at a belated



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stage would have definitely caused certain hardship to the plaintiff. The same could very well be compensated by imposing some cost to the respondents. Therefore, this Court is inclined to allow the application on condition.

25. In the result, the instant Civil Revision Petition is **allowed** on condition to pay a sum of **Rs.5,000/- (Rupees Five Thousand only)** to the respondents within a period of four weeks from the date of receipt of copy of this order, in such an event, the trial Court is directed to receive the additional written statement and proceed with the trial accordingly.

26. The trial Court is expected to dispose of the suit as early as possible, preferably, within a period of six months from the date of receipt of copy of this order. Both the parties are directed to co-operate with the trial for early disposal of the suit. Consequently, connected Miscellaneous Petition is closed.

NCC : Yes/No.
Index : Yes/No
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C.KUMARAPPAN.,J.

Ls

To

- 1.The Principal District Munsif,
Dindigul.
- 2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

Order made in
C.R.P(MD)No.1931 of 2018

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