



C.R.P.(MD).No.298 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 23.02.2023

DELIVERED ON: 03.03.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(MD).No.298 of 2022

and

CMP(MD).No.1348 of 2022

Karumani

...Petitioner

Vs

Periannan

...Respondent

PRAYER: The Civil Revision Petition has been filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 09.11.2021 made in I.A.No.1 of 2019 in O.S.No.20 of 2015 on the file of the District Munsif Cum Judicial Magistrate, Thirumayam and allow this civil revision petition.

For Petitioner : Mr.G.Sridharan

For Respondent : Mr.J.Jeyakumaran



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ORDER

This civil revision petition has been filed by the defendant in a suit for partition challenging an order dismissing an application for reception of additional written statement.

2.The plaintiff had filed a suit for partition on the ground that he had purchased an undivided share from the defendant by way of a registered sale deed dated 09.04.1986 for an extent of 3.5 cents.

3.The defendant had filed a written statement contending that on 30.01.1983, there was a family arrangement in which the properties were allotted to the share of the defendant and the defendant is in continuous possession and enjoyment of the same.

4.When the suit was posted for cross examination of PW1, the defendant had filed I.A.No.1 of 2019 seeking permission of the Court to file an additional written statement. In the additional written statement, the defendant had referred to a partition deed dated 30.01.1989 in which the



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shares were allotted to the plaintiff, defendant and their sister Patchai Ammal @Padmini and their brother namely Karuppaiah. They are in separate possession and enjoyment of their respective share. The said partition is an unregistered partition.

5.In the additional written statement, the defendant had further contended that based upon the said unregistered partition, a separate patta has been issued to the respective parties. He had further contended that the plaintiff had sold away a portion that was allotted to him in the said partition deed dated 30.01.1989 by way of a registered sale deed in favour of the third party on 14.12.2005. The application for filing of additional written statement was opposed by the defendant contending that it does not relate to the suit property and the pleadings in the additional written statement relate to the property which are not subject matter of the suit property.

6.The trial Judge had dismissed the application mainly on the ground that they do not relate to the suit schedule property and they are contradictory to the original written statement. This order is under challenge in this revision petition.



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7.The learned counsel for the petitioner had contended that in the partition deed dated 30.01.1989 not only the plaintiff and the defendant are parties, but also their sister Patchai Ammal @ Padmini and their another brother Karuppaiah were also parties to the said partition deed. Therefore, the said partition deed refers to some other properties which were allotted to their sister and brother Karuppaiah. The properties that were allotted to the share of Patchai Ammal @ Padmini and Karuppaiah are not subject matter of the suit. However, the survey number which is the subject matter of the suit is also referred to in the said partition deed. Without considering the said fact, the trial Court had dismissed the said application. Hence, he prayed for allowing the revision petition.

8.Per contra, the learned counsel appearing for the respondent had contended that the application has been filed belatedly and it refers to the properties which are not connected with the suit schedule properties.

9.I have considered the submissions made on either side and perused the materials available on record.



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10.It is settled position of law that the plaintiff is always barred from taking contradictory stand. However, the defendant is entitled to take contradictory/alternative plea in his written statement.

11.In the present case, a perusal of the additional written statement discloses that the defendant has not withdrawn any of his admission made in the original written statement. The defendant has specifically stated in the additional written statement that there is an unregistered partition deed dated 30.01.1989 in which not only the plaintiff and the defendant but also their sister and another brother Karuppaiah were parties. The present suit has been filed by one Periannan only with regard to the properties that were allotted to the share of the present defendant. Therefore, it is quite natural that the partition deed dated 30.01.1989 relates to some other properties that were allotted to the third party to the suit.

12. It is the specific case of the defendant that the suit schedule property is also mentioned in the partition deed dated 30.01.1989. Just because some other properties are also mentioned in the said partition



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deed, the entire additional written statement cannot be rejected on the ground that it is unrelated to the suit schedule property.

13.Considering the fact that the suit is pending at the stage of cross examination of PW1, the filing of additional written statement cannot be considered to be belated. The order impugned in the revision petition is set aside and the Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

03.03.2023

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
msa

To
The District Munsif Cum Judicial Magistrate
Thirumayam



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R.VIJAYAKUMAR, J

msa

Pre-delivery order made in
C.R.P.(MD).No.298 of 2022
and
CMP(MD).No.1348 of 2022

03.03.2023