



C.R.P.(MD)No.1999 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 13.07.2023

Delivered on : 07.09.2023

CORAM:

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

C.R.P.(MD)No.1999 of 2017

and

C.M.P.(MD)No.10042 of 2017

1.Kalaivani

2.Hemalatha

3.Priyadharshini ... Petitioners/Respondents1-3/Plaintiffs 1-3

Vs.

1.G.Amutha

2.G.Ganeshan ... Respondents / Petitioners 1 &2/ Defendants 1 & 2

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order, dated 08.03.2017, made in I.A. No.5 of 2017, in O.S.No.44 of 2014, on the file of the Additional District Court (Fast Track), Palani.

For Petitioners : Mr.T.Antony Arulraj

For Respondents : Mr.G.Sridharan



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ORDER

The revision petitioners are the plaintiffs and the respondents are the defendants 1 and 2 before the trial Court. The instant Revision Petition has been filed against the order, dated 08.03.2017, made in I.A. No.5 of 2017, in O.S.No.44 of 2014, on the file of the Additional District Court (Fast Track), Palani.

2. The learned counsel for the petitioners / respondents / plaintiffs (Herein after called plaintiffs) would submit that at the stage of the defendants' side evidence, the very permission granting leave to file the additional written statement, would further delay the trial proceedings and would cause prejudice to the plaintiffs. Further, the learned counsel for the plaintiffs would also rely upon the judgment of this Court reported in ***2000-1-LW-420 (H.Ramachandra Rao V. A.Mohideen)***.

3. Per contra, the learned counsel for the respondents / petitioners / defendants (Herein after called defendants) would submit that there is no withdrawal of admission in the additional written statement, and that, what they wanted by way of filing the additional written statement, is nothing



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but explaining their case with further details. He would also submit that, as the defendants they are at liberty to take inconsistent pleas, and it is also submitted that an application to receive additional written statement, has to be dealt liberally, as the same would avoid the multiplicity of the proceedings. The learned counsel for the respondents / petitioners / defendants would rely upon the following judgments :

- (i) 2005-5-CTC-785 (Muthusamy V. Thangaraj)
- (ii) 2007-3-CTC-554 (S.Suresh V. Sivabalakannan)
- (iii) 2010-5-CTC-198 (S.Sathish V. Sumathi)
- (iv) 2009-5-Supreme-430 (Olympic Industries V. Mulla Hussainy Bhai Mulla Akberally)
- (v) 2016-4-CTC-750 (Devendran V. P.V.Palani)

4. I have given my anxious consideration to the either side submissions.

5. It appears that the plaintiff has filed the suit on 19.04.2014 for the relief of declaration and recovery of possession and for partition. According to the plaintiffs, the sale deed, which was executed in the name



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of first and second defendants, is only sham and nominal document and such sale was necessitated only to save the property from the fraudulent and dubious action of the third defendant. Therefore, the plaintiffs would submit that those sale deed will not bind them. For the written statement of the defendants, the plaintiffs filed reply statement on 26.01.2015.

6. While this being so, during 2017, the defendants 1 and 2 have filed an application seeking leave of the Court to file additional written statement. According to the defendants 1 and 2, their earlier counsel, who had no grip in the civil Law had let them down by not incorporating correct facts and law, which necessitated them to file the additional written statement. Hence, filed an application seeking leave of this Court to receive additional written statement.

7. The revision petitioners/plaintiffs disputed the application on the ground that the averments stated in the additional written statement are mutually destructive to the written statement, and would also submit that the very filing of the application at the belated stage, that too when the matter was posted for defendant evidence, could not be entertained as it



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would cause great prejudice to the plaintiffs. Hence, prayed to dismiss this application.

8. The learned trial Judge, after considering either side submission, by relying the judgment in **2015-3-TNCJ-54-(Mad) (Chinnammal V. Prakash)** had granted leave to the defendants to file additional written statement.

9. Aggrieved with the order of the learned trial Judge, the instant revision petition has been filed by the plaintiffs.

10. Before we embark in to the factual aspect, this Court deems it appropriate to discuss the judgments referred to by the either side counsel. In **2000-1-LW-420 (H.Ramachandra Rao V. A.Mohideen)**, the learned Single Judge of this Court, has rejected the application seeking leave to file additional written statement, as the suit was in part heard stage.

11. It is pertinent to refer the judgment of the Hon'ble Supreme Court reported in **2009-14-SCC-525 (P.A.Jeyalakshmi V. H.Saradha)**.



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Wherein, the Hon'ble Supreme Court has followed the judgment

Bollepanda P.Poonacha V. K.M.Madapa (2008-13-SCC-173). The relevant portion ***Bollepanda P.Poonacha*** (cited supra) of the judgment is as follows-

*15. A belated counter claim must be discouraged by this Court. See Ramesh Chand Vs. Anil Panjwani [(2003) 7 SCC 350]. We are, however, not unmindful of the decisions of this Court where a defendant has been allowed to amend his written statement so as to enable him to elaborate his defence or to take additional pleas in support of his case. The Court in such matters has a wide discretion. It must, however, subserve the ultimate cause of justice. It may be true that further litigation should be endeavoured to be avoided. It may also be true that joinder of several causes of action in a suit is permissible. **The Court, must, however, exercise the discretionary jurisdiction in a judicious manner. While considering that subservance of justice is the ultimate goal, the statutory limitation shall not be overstepped. Grant of relief will depend upon the factual background involved in each case. The Court, while undoubtedly would take into consideration the questions of serious injustice or irreparable loss, but nevertheless should bear in mind that a provision for amendment of pleadings are not available as a matter of right under all circumstances. One cause of action, cannot be allowed to be substituted by another. Ordinarily, effect of an admission made in earlier pleadings shall not be permitted to be taken away. See State of A.P & Ors. Vs. M/s. Pioneer Builders, A.P. [(2006) 9 SCALE 520] and Steel Authority of India Ltd. Vs. Union of India & Ors. [2006 (9) SCALE 597] and Himmat Singh and Ors. Vs. I.C.I. India Ltd. and Ors., [2008 (2) SCALE 152].***

(Emphasis supplied by this Court)



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12. The learned Single Judge of this Court in a judgment reported in **2020-2-MLJ-17 (Gangadurai V. E.N.Palanichamy, Trustee)** would also reject the leave, when the defendant filed an additional written statement, to over come the perceived weakness and with mutually destructive pleadings

13. In **2005-5-CTC-785 (Muthusamy Vs. Thangaraj)**, the learned Single Judge of this Court has held that, when the defendant came to know about the certain new fact, , he is entitled to put forth his ground by way of additional written statement.

14. In another judgment reported in **2007-3-CTC-554 (S.Suresh Vs. Sivabalakannan)**, it has been held that the defendant is entitled to file additional written statement to explain the case further. The relevant portion of the judgment is as follows-

*"19. Reading of the additional statement makes it very clear that the revision petitioner only **wants to explain the case further by subsequent pleadings and the subsequent pleadings are in fact in consonance with his earlier pleading. It cannot be said that he raised a mutually destructive plea nor it can be said that altogether a new case was put forward by him in the subsequent pleadings.***

20. In such circumstances, the Court below ought



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to have adopted a liberal approach in granting the leave to file additional written statement.”

(Emphasis supplied by this Court)

15. In the yet another judgment of this Court reported in **2010-5-CTC-198 (S.Sathish Vs. Sumathi)**, this Court after referring so many precedents of the Hon'ble Supreme Court, has ultimately found that when the additional written statement is not mutually destructive, and has not withdrawn the admission made in the earlier statement, and when the admissions are kept intact, such additional written statement can be permitted.

16. In another Supreme Court judgment reported in **(2009)15-SCC-528 (Olympic Industries Vs. Mulla Hussainy Bhai Mulla Akberally)**, when the defendant came to know about the certain facts later on, he is entitled to bring the such fact by way of an additional written statement.

17. It is also relevant to mention the judgment of the Single Judge of this Court reported in **2016-4-CTC-750 (Usha Balashaheb Wami V. Kiran Appaso Swami)**. Wherein, this Court has held that so as to rectify the



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inadvertent mistake committed by the counsel, additional written statement can be filed.

18. In the judgment of the Hon'ble Supreme Court reported in **2007-5-SC-602 (Usha Balashaheb Wami V. Kiran Appaso Swami)**, the Hon'ble Supreme Court has laid down the ratio that when there is no withdrawal of admission, the application to file additional written statement can be liberally allowed.

19. From the careful reading of the ratio of the above judgments and while ratiocinating them, what emerges is, when the additional written statement is not mutually destructive, and when the admission made in the written statement are kept in tact, and when the defendant want to explain their existing ground, the application to seek the leave of this Court to file additional written statement may be considered liberally.

20. Now, let us consider whether the instant additional written statement comes within the contours of the above ratio. As stated supra, in the plaint it is the statement of the revision petitioners / plaintiffs that the



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sale deed which stands in the name of first and second defendants is sham and nominal. Therefore, the sale deed executed by other defendants 4 and 5 will not bind them. Such factum was disputed by the defendants in the written statement, and that there was a stand that the second and third plaintiffs and their father executed the sale deed in their favour for valuable consideration. As such the defendants submits that they are the *bonafide* purchasers, for valuable consideration.

21. Though the impugned additional written statement was not filed along with the typed set of papers, across the bar the learned counsel for the defendants circulated the copy of the additional written statement to this Court.

22. On perusal of the copy of the additional written statement, it comes to the light of this Court that, what they mentioned in the additional written statement is only an explanation as to when M.Venkatachalam came to Dindigul to execute the sale deed, and at that point of time what were all happened, and about the subsequent development in respect of the construction in the suit property. As such, this Court could not find any



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mutually destructive pleading. More interestingly, since the very written statement is intact, without any amendment, question of withdrawing the admission, made in the written statement is far fetched. On harmonious reading of the additional written statement, this Court could find further explanation to the written statement. Besides, the Court should not be rigid while considering the application seeking leave to file additional written statement, as like in the case of amendment of plaint.

23. No doubt on the side of the plaintiff, 4 witnesses were examined. However, the plaintiffs did not produce the deposition copy of those witnesses before this Court to know whether the defendants projected their case, during the cross examination or not. However, it is pertinent to mention here that though there was delay in filing the application, such application has been filed before the cross examination of D.W.1. Therefore, this Court is of the view that there is every opportunity available for the plaintiffs to confront the defendants' witnesses in respect of the pleadings contained in the additional written statement. Therefore, considering all the above aspects, this Court is of the view that there is no infirmity in the orders passed by the learned trial Judge. Further, before



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this Court, the plaintiffs are not in a position to put forth any positive material so as to interfere with the order of the Court below.

24. In the result, the instant Civil Revision Petition stands **dismissed**. There is no order as to cost.

25. It is made clear that plaintiffs are entitled to file a reply statement if advised. Considering the suit of the year 2014, the learned trial Judge is expected to dispose of this matter as expeditiously as possible, preferably, within a period of six months, from the date of receipt of copy of this order. Consequently, connected Miscellaneous Petition is closed.

07.09.2023

NCC : Yes/No
Index : Yes/No
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To

1.The Additional District Court (Fast Track),

Palani.

2.The Section Officer,

VR Section, Madurai Bench of Madras High Court,

Madurai.



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C.KUMARAPPAN.,J.

Ls

Order made in
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