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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 25.07.2023
Delivered on : .10.2023

CORAM

**THE HONOURABLE MRS JUSTICE K. GOVINDARAJAN
THILAKAVADI**

C.R.P(MD)No.1376 of 2023
and
C.M.P(MD)No.6842 of 2023

Prabakaran

... Petitioner/2nd Respondent/2nd
Defendant

Vs.

1.S.Kokilam

2.S.Megala

3.S.Maheswaran

...Respondents/Petitioners/1st & 3rd
Defendants

...Respondent/1st Respondent/Plaintiff

Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 22.07.2022 passed by the learned II Addl. Subordinate Judge, Tiruchirappalli in I.A.No.1 of 2022 in O.S.No.918 of 2015.

For Petitioner
For R1 & R2
For R3

:Mr.K.R.Kishore Ram
:Mr.H.Lakshmi Shankar
:Mr.S.Balasubramanian

**ORDER**

This civil revision petition is filed against the fair and decreetal order, dated 22.07.2022 passed in I.A.No.1 of 2022 in O.S.No.918 of 2015 by the learned II Addl. Subordinate Judge, Tiruchirappalli.

2.The third respondent/plaintiff has filed a suit in O.S.No.918 of 2015 for declaration and permanent injunction, against the petitioner/second defendant. During the pendency of the said suit, the respondents 1 and 2 herein filed an application in I.A.No.1 of 2022 under Order VI Rule 16, to permit them to withdraw the written statement said to have been filed by them in the above suit. Their contention in the petition is that though at the time of institution of the suit, the first respondent filed the written statement and the same was adopted by the petitioner and the second respondent, thereafter the conduct of the petitioner has changed and therefore, it has become necessary to strike out the written statement of the respondents 1 and 2 and thereby permitting them to withdraw their written statement already filed by them in the above suit.

3The same was resisted by the third respondent/plaintiff stating that the facts made in the written statement cannot be struck off by way of filing this application. Moreover, Order VI Rule 16 of C.P.C., deals with the amendment or striking out the pleadings and the same cannot be struck off



unless, the pleadings are shown to be unnecessary, scandalous, frivolous or vexatious or which may embarrass or delay the process of fair trial or it is otherwise. The first and second respondents by way of this application are alleging scandalous and vexatious averments as against this petitioner. Therefore, the petition to strike out the entire written statement filed by the respondents can never be entertained.

4.The trial Court, after considering the averments made in the petition and in the counter affidavit and the arguments put-forth by the respective counsel, allowed the application. Against which, the present revision petition is filed.

5.The learned counsel appearing for the petitioner/second defendant would contend that the respondents 1 and 2/defendants 1 and 3 have taken a contradictory statement, after adopting the statement filed by the petitioner and they cannot seek to withdraw their own pleadings, after a lapse of 7 years. As per Order VI Rule 16 of C.P.C., they could prefer only to strike off the pleadings and not to withdraw the written statement, which would lead to abuse of process of law. The pleading can be strike off only when the suit is scandalous and unnecessary. The learned counsel would further contend that when the hearing of the suit had commenced, the application has been filed under Order VI Rule 16 of C.P.C., amount to abuse of process of the



Court. The defendants cannot be permitted to adduce destructive pleadings.

When the plea sought to be raised is totally inconsistent with the original plea, the same cannot be permitted by the Court. Hence, the order passed by the trial Court allowing the above petition is erroneous and the same is liable to be set aside.

6. In support of his contention, the learned counsel has relied upon the following judgments:

(i) In the case of ***Sivagnanamoorthy-Vs-M.Shanmugam***, reported in ***2003(3)CTC 705***.

(ii) In the case of ***D.Lalitha and others-Vs-Rangasan and others***, reported in ***2013(3) MWN (Civil) 13***.

(iii) In the case of ***S.Malla Reddy-Vs-Future Builders Co-operative Housing Society and others***, reported in ***(2013) 9 Supreme Court Cases 349***.

7. On the other hand, the learned counsel appearing for the respondents would contend that since the conduct of the petitioner turned hostile towards them and therefore the plea taken in the written statement filed by the respondents cannot be adopted by them. Hence, the trial Court has rightly permitted the respondents 1 and 2 to withdraw the written statement filed by them and an opportunity was given to them to file their



own written statement, is perfectly correct.

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8. Heard the learned counsel appearing on either sides and perused the materials available on record.

9. Moreover, under Order 6 Rule 16 of C.P.C., reads as under:

“16. Striking out pleadings.-The Court may at any stage of the proceedings order to be struck or amended any matter in any pleading-

(a) which may be unnecessary, scandalous, frivolous or vexatious or

(b) which may tend to prejudice embarrass or delay the fair trial of the suit, or

(c) which is otherwise an abuse of the process of the Court.”

10. In the present case, the respondents 1 and 2 and the petitioner filed their statement jointly as a common pleading and the respondents 1 and 2 now by way of filing the present application in I.A.No.1 of 2022 prays to withdraw the written statement already filed by them stating that the conduct of the petitioner had become hostile towards them and therefore, they may be permitted to file a separate written statement. Indirectly the respondents 1 and 2 are stating that they are not accepting the pleadings made in the written statement already filed. If the same is allowed, it would



amount in permitting the respondents 1 and 2 to withdraw the averments made by them in the original written statement or withdraw the admissions made by them and concessions. If the defendants are permitted to come forward with contradicted plea, it would prejudice not only the third respondent/plaintiff but also to petitioner herein. The original plea raised in the written statement already filed cannot be ignored.

11. Therefore, the petition filed by the respondents 1 and 2 under Order VI Rule 16 of CPC is wholly misconceived and unsustainable. Hence, the Court below is not correct in ignoring the original written statement already filed by Respondent 1 and 2. Therefore, the order passed by the trial Court is set aside. The civil revision petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

.10.2023

NCC:Yes/No
Index:Yes/No
Internet:Yes/No
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To

- 1.The II Addl. Subordinate Judge,
Tiruchirappalli.
- 2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

K.GOVINDARAJAN THILAKAVADI, J.

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