



C.R.P.(MD) No.2477 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.07.2023

CORAM:

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

C.R.P.(MD) No.2477 of 2022
and
C.M.P(MD) No.12145 of 2022

Sivasanghu

... Petitioner

Vs.

Paramasivam

... Respondent

Prayer :- Petition filed under Article 227 of the Constitution of India, to set aside the fair order and decretal order made in New I.A.No.1 of 2022 (old I.A.No.442 of 2022) in O.S.No.66 of 2015 on the file of the District Munsif, Keeranur, Pudukkottai District, dated 16.09.2022.

For Petitioner : Mr.K.Kumaravel

For Respondent : Mr.M.Rajarajan

ORDER

This civil revision petition is filed by the defendant in O.S.No.66



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of 2015, on the file of the District Munsif Court, Keeranur, Pudukkottai District, against the fair and decreetal order made in I.A.No.1 of 2022, dated 16.09.2022.

2. The respondent as plaintiff filed the above suit in O.S.No.66 of 2015 for the relief of permanent injunction. The petitioner as defendant filed his written statement in the above suit. While so, the petitioner has took out an application under Order 8, Rule 9 CPC seeking the leave of the Court to file an additional written statement.

3. According to the petitioner, the respondent/plaintiff has encroached his property. Hence, it is necessary for the petitioner to file an additional written statement to that effect. The same was resisted by the respondent/plaintiff stating that there is no such encroachment made by the respondent as alleged by the petitioner/defendant. In fact, the petitioner/defendant failed to co-operate with the Advocate Commissioner in measuring the property and therefore, leave shall not be granted to the petitioner to file an additional written statement.



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4. The trial Court, after hearing the learned counsel for the respective parties, dismissed the above petition stating that the petition has been filed after a lapse of seven years and also observed that the intention of the petitioner is only to drag on the proceedings. Assailing the same, the present revision petition is filed.

5. The learned counsel for the petitioner would submit that the Court should be liberal in receiving the additional written statement and taking an inconsistent plea in the additional written statement, cannot be held against the parties, who wants to file additional written statement. He would further submit that filing an additional written statement belatedly, cannot be a ground for dismissal of the petition. There must be some liberal approach given to the parties to have a fair adjudication. Moreover, the inadvertent mistake committed by the counsel while drafting written statement, cannot be a ground to defeat the genuine claim of the parties. To support his contention, he has relied upon the decisions reported in **2007 (3) CTC 554** and **2016 (4) CTC 750**.



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6. On the other hand, the learned counsel for the respondent submitted that the Court should not permit the party to take mutually destructive plea in an additional written statement. The trial Court has rightly dismissed the application, which calls for no interference.

7. I have considered the rival submissions made by the respective counsel.

8. Order 8, Rule 9 CPC deals with the filing of subsequent pleadings by a defendant in the suit and the same reads as follows:-

"No pleading subsequent to the written statement of a defendant other than by way of defence to a set-off or counter-claim shall be presented except by the leave of the Court and upon such terms as the Court thinks fit, but the Court may at any time require a written statement or additional written statement from any of the parties and fix a time for presenting the same"

9. Admittedly, the defendant cannot raise destructive plea nor he



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can introduce a new case by way of filing an additional written statement. But, it is not found in the present case. From the above decisions relied by the learned counsel for the petitioner, it is very clear that leave to file additional written statement, is to be granted liberally, except when the defendant raises a mutually destructive plea and when he tries to introduce altogether a new case. In the present case, the contention of the petitioner that the respondent/plaintiff has encroached the property belonging to him. A reading of the additional written statement makes it clear that the revision petitioner only wants to explain the case further by subsequent pleadings, which are in consonance with the earlier pleadings. Therefore, it cannot be construed to give a destructive plea or a new case is introduced. On the other hand, it would give quietus to the litigation and also multiplicity of proceedings can be avoided.

10. In such circumstances, the Court below ought to have adopted a liberal approach in granting leave to file the additional written statement. Hence, the impugned order passed by the Court below calls



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for interference. Accordingly, the impugned order dated 16.09.2022 passed in I.A.No.1 of 2022 by the learned District Munsif, Keeranur, Pudukkottai District, is set aside. The trial Court is directed to take the additional written statement filed by the revision petitioners on file and proceed with the trial in accordance with law.

11. In the result, this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

12.07.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes
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To
The District Munsif,
Keeranur,
Pudukkottai District.



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K.GOVINDARAJAN THILAKAVADI, J.

cp

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