



C.R.P.(MD)No.2929 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.11.2023

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)No.2929 of 2023
and
C.M.P.(MD)No.15131 of 2023

Punithan : Petitioner/Petitioner/Defendant

Vs.

Mary Shybi : Respondent/Respondent/Plaintiff

Prayer : This Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order, dated 18.10.2023 passed in I.A.No.23 of 2023 in O.S.No.229 of 2013 on the file of the learned Principal District Munsif Court, Valliyoor.

For Petitioner : Mr.M.Kannan

For Respondent : Mr.S.Selva Aditya,
for Mr.G.Prabhu Rajadurai



C.R.P.(MD)No.2929 of 2023

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ORDER

The Civil Revision Petition is directed against the order passed in I.A.No.23 of 2023 in O.S.No.229 of 2013 on the file of the Principal District Munsif Court, Valliyoor, dismissing the petition filed under Order VIII Rule 9 and Section 151 C.P.C.

2. The respondent/plaintiff has laid the above suit for permanent injunction restraining the defendant and their men from interfering with the plaintiff's peaceful possession and enjoyment of the suit property and another injunction restraining the defendants and their men or agents from alienating or encumbering the suit property and for declaration that the document, dated 19.04.2013 is not binding on the plaintiff.

3. It is seen from the records that the written statement was filed as early as on 04.02.2014; that the plaintiff side evidence was commenced on 06.07.2017 and their evidence was closed on 25.10.2019; that thereafter, the defendant has adduced their evidence as D.W.1 to D.W.3 and two Court witnesses as C.W.1 and C.W.2 and that the defendant side evidence was closed on 30.01.2023 and the case posted for arguments on 03.02.2023.



C.R.P.(MD)No.2929 of 2023

Thereafter, the defendant has filed two applications in I.A.No.18 of 2023 and I.A.No.19 of 023 to reopen the case and mark some documents and that the same were dismissed; that the petitioner/defendant has preferred the revisions before this Court in C.R.P.Nos.738 and 739 of 2023 and the same were dismissed at the admission stage with a direction to dispose of the case within three months; that the petitioner/defendant has thereafter filed two more petitions in I.A.No.21 of 2023 and I.A.No.22 of 2023 to reopen the case and to examine the Sub Registrar, Panagudi and Sub Registrar, Valliyoor and the same were allowed, that both the Sub Registrars were examined as D.W.4 and D.W.5 and that thereafter, when the case was posted for arguments, the above application for receiving the additional written statement came to be filed.

4. The main contention of the revision petitioner is that D.N.Subbiah Iyer Educational and Charitable Trust, Thoothukudi, was owning 28 Acres and 2.33 Cents as per the sale deed, but while forming the trust, it was registered as the trust was owning 55 Acres 3 Cents of land; that the trust which is a public trust has sold more extent of land and that too without the permission of the Court; that in the suit in O.S.No.100 of 1996 the original owners of the suit property were not impleaded and title was not



C.R.P.(MD)No.2929 of 2023

decided therein and that therefore, the final decree passed in favour of the Nirmala Kasthuribai, Jesu Rathinabai and Mariya Micheal Ammal were not binding on the petitioner.

5. It is the further contention of the revision petitioner that he purchased the suit property from its original owners and he was in possession and enjoyment of the property; that the averments mentioned in the additional written statement were omitted to be mentioned in the original written statement and that therefore, it has become just a necessary for filing the additional written statement to avoid multiplicity of proceedings.

6. The case of the respondent/plaintiff is that the petitioner has already filed a suit to set aside the decree passed in O.S.No.100 of 1996 and the same was dismissed and as such the decree and judgment passed in O.S.No.100 of 1996 has become final and that the petitioner has filed the additional written statement totally contra to the earlier written statement.

7. The learned counsel for the revision petitioner would submit that the plaintiff has suppressed the material aspects of the case and the way in which, the title was passed; that the plaintiff has miserably failed to advance



C.R.P.(MD)No.2929 of 2023

the real controversy pending between the parties and that therefore, the petitioner is constrained to raise the additional pleadings to highlight the real controversy pending between the parties. The learned counsel for the revision petitioner would further submit that the petitioner undertakes not to adduce any more evidence and they will advance their arguments, if additional written statement is received.

8. But in the affidavit filed in support of the above petition, the petitioner has stated that the Court has to frame the additional issues on the basis of the additional written statement to be filed and then he will be ready to advance his arguments.

9. Generally, the parties are expected to adduce evidence on the basis of the pleadings already made. But, in the present case as rightly contended by the learned counsel for the respondent, the petitioner has been attempting to raise additional pleadings on the basis of the evidence already adduced. As rightly observed by the learned trial Judge, the petitioner, after examining the Sub Registrars of Panagudi and Valliyoor as D.W.4 and D.W.5 respectively, has filed the above petition to receive the additional written statement raising the additional pleadings on the basis of the evidence adduced by the said witness and such a course is unknown to law.



C.R.P.(MD)No.2929 of 2023

10. As already pointed, after completion of the trial and when the suit was posted for arguments, the petitioner has filed two applications in I.A.No.18 of 2023 and I.A.No.19 of 2023 for re-opening the case and for marking some documents and the said petitions were dismissed by the trial Court and was confirmed by the High Court and that subsequently, he filed two more applications in I.A.No.21 of 2023 and I.A.No.22 of 2023 for reopening the case for examining the Sub Registrars and the same were allowed and on that basis, D.W.4 and D.W.5 came to be examined and that after closure of the defendant side evidence, when the suit was posted for arguments, the above application came to be filed and that too was, returned twice and was represented.

11. The learned counsel for the petitioner has relied on the decision of this Court in ***C.R.P(PD)(MD)No.2869 of 2019, dated 03.09.2019 [K.Durgambal (died) A.K.Nagooran and others Vs. Ganesh Maniyan]***, wherein this Court by observing that the petitioners therein have not raised two material grounds in the original written statement and taking note of the position that a liberal construction shall be made since it is the full discretion of the Court to accept or not to accept such additional grounds by way of additional written statement at any stage of the suit, allowed the revision.



C.R.P.(MD)No.2929 of 2023

12. The learned counsel for the petitioner has also relied on the judgment of the Hon'ble Supreme Court in ***Olympic Industries Vs. Mulla Hussainy Bhai Mulla Akberally and others*** reported in ***(2009) 15 SCC 528*** and the decision of this Court in ***Bhakthavatchalam Vs. Deiveegan*** reported in ***2022 2 L.W. 835***, for the position that the delay is not a ground for dismissal of an application filed under Order VIII Rule 9 C.P.C where no prejudice was caused to the party opposing such amendment or acceptance of additional written statement.

13. The above decisions cannot be applied to the facts of the case on hand.

14. Considering the entire facts and circumstances of the case, this Court has no hesitation to say that the above petition came to be filed only to delay and protract the proceedings. Though this Court has earlier directed the trial Court to dispose of the suit within three months, the case is being dragged on by the petitioner. Considering the above, the impugned order of the trial Court in dismissing the petition with costs cannot be found fault with.



C.R.P.(MD)No.2929 of 2023

WEB COPY 15. In the result, the Civil Revision Petition is dismissed. No costs.

Consequently, connected Miscellaneous Petition is closed.

09.11.2023

NCC :yes/No
Index :yes/No
Internet:yes/No
das

To

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



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C.R.P.(MD)No.2929 of 2023

K.MURALI SHANKAR,J.

das

Order made in
C.R.P.(MD)No.2929 of 2023
and
C.M.P.(MD)No.15131 of 2023

Dated : 09.11.2023