



C.R.P.No.312 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.06.2024

CORAM

THE HON'BLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.No.312 of 2023
and C.M.P.No.2627 of 2023

1.Vellaiyan
2.Chinnusamy

... Petitioners

-Vs-

1.Chinnapaiyan
2.Manokaran
3.Madheshwari
4.Senthil
5.Sivakami

... Respondents

Prayer : Civil Revision Petition under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 13.12.2022 made in I.A.No.11 of 2022 in O.S.No.612 of 2020 on the file of the District Munsif Court, Senthamangalam.

For Petitioners : Mr.P.Maneesh
for Mr.S.Saravanakumar

For Respondent : Mr.S.Varanesh
for Mr.P.Asaithambi

ORDER

The plaintiffs are the revision petitioners. For the sake of convenience, the parties will be referred to as per their ranking in the suit.



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2. O.S.No.362 of 2013 was presented to the learned District Munsif at Namakkal for the relief of declaration of easement by grant with respect to the pathway denominated in the suit as 'ABCD' in the suit schedule mentioned property. The claim of the plaintiff is that the plaintiffs and the defendants are cousins and their respective fathers had entered into a partition document on 15.05.1974, whereby a right was given to both the predecessors of the plaintiffs and the defendants to use the 'ABCD' pathway for the purpose of traversing of the respective properties.

3. Pending the suit, a new Court had been created at Senthamangalam and the suit which had been presented before the learned District Munsif at Namakkal stood transferred to the new Court and was numbered as O.S.No.612 of 2020.

4. A written statement was presented in the suit on service of summons to the defendants. It admitted to the existence of the document dated 15.05.1974 and that it had granted a right of easement. However, it proceeded to state that by virtue of efflux of time and due to ravages of nature, the pathway had to be done away and instead a stone construction was put therein. Subsequently, additional written statement was filed whereby the existence of the pathway itself was denied. On the basis of these pleadings, the parties went for trial. Evidence was recorded and the matter was posted for arguments. At that stage, an application was filed in



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I.A.No.11 of 2022 seeking for receiving reply statement to the additional written statement filed by the defendants.

5. The learned District Munsif, taking into consideration the stage of the suit, dismissed the application, against which the present revision.

6. Heard Mr.P.Maneesh on behalf of Mr.S.Saravanakumar for the petitioners and Mr.S.Varanesh on behalf of Mr.P.Asaithambi for the respondents.

7. It is not in dispute that the plaintiffs, pending the suit amended the plaint. This constrained the defendants to file an additional written statement on the basis of the respective pleadings. The parties have already gone on trial, evidence had been recorded and it is at the stage of arguments that the present application came to be filed. Though it is not compulsory to file a reply statement to an amended written statement, the plaintiffs by way of abundant caution wanted to file a reply statement to the additional written statement. By giving an opportunity to the plaintiffs to file the reply statement, no prejudice will be caused to the defendants. This is because, it is only a narration of the pleadings according to the plaintiffs.

8. An application under Order VIII Rule 9 requires liberal construction especially when the matter is still pending before the trial Court. Stricter view can be taken with respect to introduction of new pleadings at an appellate stage though



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Order VIII Rule 9 empowers any Court viz., the trial, first appellate or second appellate Court to receive additional pleadings. As the matter is still at large before the trial Court, I feel that receipt of the reply statement by the plaintiffs would not prejudice the case of the defendants, as they had been given an opportunity to file additional written statement. Yet, I have to balance the interest of both the parties. If I were to permit the plaintiffs to file a reply statement, it might have an effect of reopening the evidence that has already been recorded. Therefore, I put it to Mr.S.Saravanakumar that if his application to file reply statement is allowed, he will not seek reopening of the case for the purpose of recording of further evidence. Thereafter, I adjourned the matter to enable him to get instructions.

9. Today, Mr.Maneesh appearing on behalf of Mr.S.Saravanakumar reports that the plaintiffs will not seek for reopening of the evidence that has already been concluded. He states that all that the plaintiffs want is a reply statement to be on record for the additional written statement already filed by the defendants.

10. Taking into consideration this fact, the order dated 13.12.2022 in I.A.No.11 of 2022 in O.S.No.612 of 2020 on the file of the District Munsif Court, Senthamangalam stands set aside. The reply statement filed by the plaintiffs will be received by the Court. The court will not reopen the evidence after receiving the reply statement. It shall hear the arguments of the respective parties on the pleadings and evidence already on record and proceed to pronounce the judgment



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in the suit. All that the Court would have to do is to receive the reply statement of the plaintiffs and nothing else. Learned counsel for the defendants is also agreeable to the said course of action.

11. With the above directions, the civil revision petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

12.06.2024

Index : Yes/No

Neutral Citation : Yes/No

KST

To

The District Munsif
Senthamangalam.



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V. LAKSHMINARAYANAN, J.

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