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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 20.04.2023	Delivered on 28.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

C.R.P.No.1189 of 2021
and C.M.P.No.9114 of 2021

Kullammal ... Petitioner/Defendant

-Vs-

Jothilingam ... Respondent/Plaintiff

Prayer:- Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order dated 03.02.2020 made in I.A.No.445 of 2019 in O.S.No.292 of 2017 on the file of the learned First Additional District Munsif, Kallakurichi.

For Petitioner : Mr.N.Suresh
For Respondent : No appearance

O R D E R

This Civil Revision Petition had been filed to set aside the fair and decretal order dated 03.02.2020 made in I.A.No.445 of 2019 in O.S.No.292 of 2017 on the file of the learned First Additional District Munsif, Kallakurichi.

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2. The learned Counsel for the Revision Petitioner submitted that the Defendant in the suit in O.S.No.292 of 2017 is the Revision Petitioner herein. The Defendant had filed I.A.No.445 of 2019 in O.S.No.292 of 2017, seeking permission to file an additional written statement stating that the subject property had been assigned in her favour. After holding due enquiry, the learned I Additional District Munsif, Kallakurichi, dismissed the Petition in I.A.No.445 of 2019 by order dated 03.02.2020. Aggrieved by the same, the Defendant had approached this Court.

3. The learned Counsel for the Revision Petitioner invited the attention of this Court to the observation made by the learned I Additional District Munsif, Kallakurichi, in the order in I.A.No.445 of 2019 in O.S.No.292 of 2017, which is extracted below:

> *"Earlier, the Petitioner stated that the suit property belongs to husband by way of oral partition taken place between the members of the family and by inheritance and now she claims that the suit property was assigned by the Government to her which is totally contra to the pleadings made earlier. The pleadings made by the Petitioner earlier is total contra to that of the additional written statement filed and the same can be made only through amendment of the pleadings and not by way of filing of additional written statement. Hence the Petition being devoid of merits, the said Petition is dismissed."*

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4. Also, the Revision Petitioner invited the attention of this Court to the observation made by the learned Judge of this Court, while admitting the C.R.P.(PD) No.1189 of 2021 by order dated 17.06.2021, which is extracted as under:

> *"2.The learned I Additional District Munsif, Kallakurichi, had rejected the said application holding that in the original written statement, the Petitioner herein had claimed protection from a declaratory relief being granted on the ground that they have been in possession for a considerable period of time and by the additional written statement, a new stand of assignment had been taken.*
>
> *3.However, in the affidavit filed in support of the said application, it had been stated that the assignment had been granted by way of a written document which is a fact which has to be examined by the Court whether pleaded or not pleaded, since it is an official document."*

5. Therefore, he seeks to allow the Civil Revision Petition and set aside the order passed by the learned I Additional District Munsif, Kallakurichi, dated 03.02.2020 dismissing the petition.

6. Inspite of grant of repeated adjournments and notice had been served on the learned Counsel for the Respondent before the trial Court, none appeared for the Respondent before this Court.

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Point for consideration:

Whether the order passed by the learned I Additional District Munsif, Kallakurichi, dismissing the I.A.No.445 of 2019 in O.S.No.292 of 2017, dated 03.02.2020 is to be set aside as perverse?

7. On consideration of the submission made by the learned Counsel for the Revision Petitioner and on perusal of the documents filed along with this Civil Revision Petition, it is found that the suit is filed by the Respondent as Plaintiff seeking declaration of title to the suit property and for injunction. The Revision Petitioner herein as Defendant in the suit filed written statement denying the contention of the Plaintiff in the plaint and the Defendant had claimed title to the suit property and also claimed possession as though the Defendant's husband was allotted the suit property. Subsequently, before the commencement of the trial, the Defendant had filed I.A.No.445 of 2019 in O.S.No.292 of 2017 seeking to file additional written statement. In the proposed additional written statement, it is stated that the suit property was assigned to the Defendant which is contrary to the earlier statement made by her. Therefore, the

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learned I Additional District Munsif, Kallakurichi, had dismissed the petition seeking to file additional written statement. Aggrieved by the same, the Defendant in O.S.No.292 of 2017 had approached this Court under Article 227 of the Constitution of India seeking to set aside the same.

8. As per the provisions of the Code of Civil Procedure, the Plaintiff who knocks the door of the Court has to state his/her case specifically. Whereas the Defendant has a right to defend the suit. He/she can make contradictory claims in the written statement. The order passed by the learned I Additional District Munsif, Kallakurichi, dismissing the claim of the Defendant that she cannot make contradictory claim by filing additional written statement and that she shall file only petition to amend the written statement is found unacceptable. Order VIII, Rule 9 of CPC deals with subsequent pleadings. Therefore, if the Defendant makes a contradictory claim to the earlier pleadings, the Plaintiff is to be granted an opportunity to meet out the contents of the additional written statement. The contention of the Revision Petitioner as Defendant in the suit that the property was assigned to her husband was not allowed in which case the

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Defendant will suffer injustice.

9. On the other hand, if the Defendant is permitted to file additional written statement the Plaintiff should be given an opportunity to meet out the new contradictory statements made by the Defendant. It is for the respective parties to prove their contention during trial. Before commencement of the trial, the Court ought to have allowed the amendment to the Pleadings leniently. Instead the petition seeking permission of the Court to file additional written statement was rejected/refused by the Court by dismissing the same.

10. As per the reported ruling of this Court in ***AIR 1961 Mad. 262 [Dhanapal Chettiar and others -vs- Govindaraja Chetty and others],*** a person may rely upon one set of facts if he succeeds to prove it and he can rely on another set of facts if he can succeed in proving them and it appears to him to be fair to stick on the instruction of this order to say that he must make up his mind on which particular line he will put his case, when perhaps he is very much in the dark. Therefore, inconsistency is permissible. It is settled proposition of law that Plaintiff who knocks the

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door of the Court shall have a specific case whereas the Defendant is entitle to claim contradictory or inconsistent pleas.

11. In the light of the above, the order of the learned Additional District Munsif, Kallakurichi, dismissing the petition is found unacceptable and unfair. Further, if it is an assigned land, the Petitioner being illiterate lady, because of her lack of education, she may not have instructed her Counsel at the earlier instance she should not be prevented from putting forth her claim in later point of time before commencement of the trial. The only consideration of this Court is to permit the Plaintiff to meet out the pleadings raised by the Defendant by filing additional written statement. Also, it is to be noted that the Petition had been filed under Section 151 of CPC, in the principles of fairness, equity, good conscience, which governs the Civil Court in granting the relief. Therefore, the order of the learned Additional District Munsif, Kallakurichi, is found unacceptable. Therefore, this Court has to necessarily interfere with the findings of the trial Judge under Article 227 of the Constitution of India to allow the petitioner to render justice to the Defendant.

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12. In the light of the above discussion, the point for consideration is answered in favour of the Revision Petitioner and against the Respondent. The order dated 03.02.2020 passed by the learned I Additional District Munsif, Kallakurichi, dismissing the I.A.No.445 of 2019 in O.S.No.292 of 2017, is to be set aside.

In the result, **this Civil Revision Petition is allowed.** The order dated 03.02.2020 passed by the learned I Additional District Munsif, Kallakurichi, dismissing the I.A.No.445 of 2019 in O.S.No.292 of 2017, is set aside. The Revision Petitioner as Defendant in the suit in O.S.No.292 of 2017 is permitted to file additional written statement. At the same time, when there is contradictory claim to the earlier claim made, the Plaintiff should be given a chance to meet out the contents of the additional written statement. Consequently, connected miscellaneous petition is closed. No costs.

28.02.2024

SRM
Index : Yes/No
Speaking/Non-speaking order
Neutral Citation : Yes/No

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To

1. The First Additional Special Judge,
   Krishnagiri.

2. The Section Officer, VR Records,
   High Court, Chennai.

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SATHI KUMAR SUKUMARA KURUP, J.,

SRM

Order made in
C.R.P.No.1189 of 2021

28.02.2024

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