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CRP. No.2137 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.06.2024

PRONOUNCED ON : 11.07.2024

CORAM

THE HONOURABLE **MR.JUSTICE BATTU DEVANAND**

C.R.P. (PD) No.2137 of 2017

&

CMP No.10245 of 2017

1.Lakshamma

2.Jayamma

... Petitioners

Vs.

1.Yasodhamma

2.Pillamma

(R-2 died. Petitioners 1 & 2 and the respondents 1, 3& 4 are the Lrs of the deceased R2 as per the memo dated 30.09.2021 and vide order of the Court dated 06.10.2021 made in CRP No.2137 of 2017(VMVJ).

3.Muniyamma

4.Saraswathamma

5.Dr.Vijaya Kumar

6.Ramakrishnappa

7.Anandaiah

8.M/s.Ramamoorthy

Educational and Charitable Trust,
rep. by the respondents 3 to 5.

9.Najundamma Najunda gowda

10.The Indian Evangelical Church Trust,



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rep. by its Chairman Yoonjin Chung,
S/o.Jaowoan,
No.1, Kacharakamahalli Village,
Street, Thomas Town Post,
Bangalore-84

.. respondents

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order of the learned Subordinate Judge, Hosur dated 03.03.2017 passed in I.A.No.32 of 2017 in O.S.No.138 of 2009.

For Petitioners	: Mr.Ashwin Prasad for Ms.V.Srimathi
For Respondents	: Mr.G.M.Ananthakumar for RR5 to 8

ORDER

This Civil Revision Petition has been filed by the petitioners against the order dated 03.03.2017 passed by the learned Subordinate Judge, Hosur in I.A.No.32 of 2017 in O.S.No.138 of 2009.

2.The petitioners herein are the plaintiffs in the suit. They filed a suit in O.S.No.138 of 2009 before the Court below seeking for partition and for separate allotment of their shares in the suit schedule properties and also for permanent injunction against the defendant nos.5 to 8 not to alienate the suit schedule properties in favour of the third parties.



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WEB COPY 3. Resisting the suit, the third defendant filed a written statement.

However, later the third defendant, finding that the averments mentioned in her main written statement are not sufficient, intended to file an additional written statement. Therefore, the third defendant moved an Interlocutory Application in I.A.No.32 of 2017 under Order 8 Rule 9 of CPC, seeking to permit her to file an additional written statement, which is filed along with the I.A..

4. Resisting the above said I.A, the plaintiffs filed a counter refuting the averments made in the IA.

5. The trial Court having considered the submissions made by both the parties, vide order dated 03.03.2017, allowed the IA. Questioning the same, the present Revision Petition has been filed.

6. The brief facts of the case of the plaintiffs are as follows:

The suit schedule properties belonged to one Venkatesh Gowdu, who had two wives namely Gudiyamma and Pillamma, the first defendant.



The said Venkatesh Gowdu died on 16.08.1981 intestate leaving his two wives, 5 daughters and one son as his legal heirs. After demise of Venkatesh Gowdu, his wife Gudiyamma also passed away without issues and also his son Ramamurthy died as bachelor. The family members of the deceased Venkatesh Gowdu are in joint possession and enjoyment of the suit schedule properties. Whiles, after the death of Ramamurthy, the plaintiffs came to know that Thirumathi.Pillamma, the first defendant had gifted "A" and "B" suit schedule properties to her son under a gift deed dated 27.11.2003 in favour of her son Ramamurthy on the basis of the Will alleged to have been executed by the Venkatesh Gowdu on 24.02.1997 during his life time. After the demise of Ramamurthy, the plaintiffs and the other family members demanded partition of the joint family properties. However, the first defendant namely Pillamma informed that her husband had executed a Will in the year 1997 bequeathing the suit properties in her favour and his son Ramamurthy with a condition that Ramamurthy would acquire the properties only after the death of his mother Pillamma, the first defendant herein. The Will is not a genuine one and it contains several infirmities and hence it is invalid under law since the testator Venkatesh Gowdu was not having sound and disposing state of mind and suffering



from the ailments and this Will was created in the year 1977 and the fact of execution of the said Will has been suppressed by the first defendant till the death of her son Ramamurthy. There was no scope for the testator Venkatesh Gowdu to affix his left thumb impression since his both hands were paralyzed and also he could not even to move and there was no possibility for him to go to the Sub-Registrar Office for the registration of the Will. Therefore, denying existence of the Will claiming that the suit schedule properties are joint family properties, the plaintiffs are entitled to their respective shares, they have filed the suit.

7.The suit filed by the plaintiffs has been contested by the third defendant. She filed a written statement containing only few paragraphs, stating that the said Venkatesh Gowdu died intestate in the year 1981, and his children had inherited the suit properties after his demise. The said Ramamurthy, who was the only son of the said Venkatesh Gowdu was a sick person, taking treatment from the 5th defendant. The 5th defendant, taking advantage of the said Ramamurthy, fabricated the documents. The Will mentioned by the 5th defendant is void and cannot deprive the rights of the daughters. The third defendant also filed the suit against D5 and D6 and



D9 for cancellation of trust deed said to have been created by the 5th defendant.

8.Be that as it may, the third defendant after filing the above said written statement, also intended to file an additional written statement, stating that the averments mentioned in the original written statement are not sufficient. According to the third defendant, the Will dated 24.02.1977 executed by the Venkatesh Gowdu in favour of his second wife, who is the first defendant Pillamma and his son Ramamurthy is true and acted upon and it was also excluded when he was alive and was in sound state of mind. The terms of the Will are very clear that Ramamurthy will get the properties after the death of his mother Pillamma, the first defendant. The said Ramamurthy died on 04.03.2004 leaving behind his mother, the first defendant namely Pillamma and thereby the properties have gone to the exclusive possession of the first defendant and thus the said properties have become the self-acquired properties of the first defendant. Thereafter, the first defendant had gifted the said properties to the sons of the third defendant. The third defendant denied the gift deed dated 27.11.2003 executed by the first defendant in favour of her son Ramamurthy. The said



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Ramamurthy had been under influenced by the 5th defendant, who is the Doctor giving treatment to him. The 5th defendant made him to execute the gift deed in favour of Dharmasthala temple in respect of certain items of the suit properties. However, the authorities of Dharmasthala Temple did not accept the gift since they found that the said Ramamurthy was not in a sound state of mind and ultimately, the gift deed was cancelled. Again the 5th defendant prepared a trust deed and a Will dated 15.12.2003, said to have been executed and registered by the said Ramamurthy, which according to the third defendant is under coercion and fraud played by the 5th defendant and the said Ramamurthy died on 04.03.2004 immediately just after 3 months from the date of the execution of the trust deed and Will. But trust deed would itself established that it is a plan by the 5th defendant to grab the suit properties alongwith the defendants 6 and 7, which were exclusively belonging to the first defendant. With these averments, the third defendant prepared an additional written statement and seeks permission to file the same and hence she moved IA.32 of 2017. The said IA has been allowed by the Court below vide order dated 03.03.2017.

9. Mr.Ashwin Prasad, learned counsel for the petitioner would submit



that the Court below shall have appreciated that the suit filed for partition and the basis of the claim has been clearly set out and the defendant had filed the written statement in the year 2006 and the only allegation is that Ramamoorthy was a sick person. The Court below had failed to note that the additional written statement was filed in April 2016, after completion of the evidence. It sets out new facts in the nature of proceedings itself and the additional written statement projecting new facts together. The learned counsel further submits that the learned trial Judge has concluded that the evidence is yet to start, which is not factually correct. The evidence of the plaintiff side had been adduced and the case is ripe for disposal, at that stage to permit additional written statement would radically change the nature of litigation and delay the proceedings further. As such, the learned counsel submits that the Court below erred in allowing the application to file additional written statement, which is contrary to law, manifestly erroneous and wholly without justification and sought to set aside the same by allowing the present revision petition.

10. The learned counsel for the respondents contends that on 24.02.1977, the deceased Venkatesh Gowdu, had executed a Will in favour



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of Ramamoorthy and the first defendant and that this fact was not mentioned in the written statement already filed and that the details about the settlement deeds executed thereafter and that in order to prove the genuineness of the case, there is necessity to include some additional details in the case and in that manner, it is intended to file an additional written statement in the original suit. The learned counsel further contended that the Court below has rightly come to the conclusion that in order to arrive at a proper final decision in the case, there is necessity to file an additional written statement. As such, the order dated 03.03.2017 passed in I.A.No.32 of 2017 is well founded and interference of this Court is not required and accordingly, sought to dismiss the present revision petition.

11. Having heard the respective counsel and upon perusal of the material available on record, the only issue to be considered is whether the order of the Court below in permitting the third defendant to file an additional written statement is permissible under law or not?

12. Admittedly, the facts are not in dispute. The Original Suit has been filed for partition in the year 2004 and later on, it was transferred to



Subordinate Court, Hosur and renumbered as OS.No.138 of 2009. The defendant had filed a written statement in the year 2006. He sought to file an additional written statement in the year 2017. The contention of the plaintiff is that at the time of seeking to file an additional written statement, they have completed the evidence on behalf of the plaintiffs side. But the Court below mentioned in its order that the trial is yet to be commenced in the suit and the plaintiffs also did not adduce evidence. Objection was raised on the side of the plaintiffs that after filing of the written statement, as contemplated under Order 8 Rule 9 of CPC, an additional written statement could not be filed and that it is barred and the petition seeking to file the additional written statement should not be allowed. The Court below relied on the judgment of this Court reported in **2017(1) TLNJ 396** (Civil) in the case of ***“Sundarajan Vs. Dr.K.Chandrasekaran and two Others”***, to allow the petition to permit to file an additional written statement. In the said judgment, this Court has held as extracted herein under:

"The purpose of Order VIII Rule 9 providing for filing of additional written statement with the leave of the Court is two-fold, it is to ensure that license is not given to the defendant in a suit to perpetually keep filing additional documents so as to prolong the suit and cause prejudice to the plaintiff by



deliberately delaying the suit from reaching its logical end. Second, it is to ensure that the Court is provided the ultimate discretion to permit the filing of written statement or additional written statement from any of the parties and fix a time limit of not more than thirty days for presenting the same. Here, the Court is permitted to exercise its discretion to allow the filing of additional pleadings. Hence, the issue of minimizing delay is self-contained in the provision itself. However, giving the liberty to the Court of filing the additional written statement at any juncture where the Court feels it is just and necessary".

13.To substantiate their stand, the learned counsel for the petitioners/plaintiffs relied upon the following judgments:

- (i) 2005(4) LW 482(Chandra and Others Vs. Ranganathan);
- (ii) 2007(1) CTC 586(R.S.Nagarajan Vs. R.S.Gopalan & Others);
- (iii) 2019 (1) LW 54(A.Manohar Prasad and Others Vs.Prasad Production Pvt Ltd);
- (iv) 2019 SCC OnLine Mad 5755(KRT Ragunathan Vs. N.Subramani);
- (v) 1998(II)CTC 94(N.Srinivasan Vs. Muthammal);
- (vi) 2013(9)SCC 349(S.Malla Reddy Vs. Future Builders Cooperative Housing Society and Others); and
- (vii) 2020(19) SCC 366(Ram Niranjana Kajaria Vs. Sheo



Prakash Kajaria and Others.

14. In the case of ***“Chandra and Others Vs. Ranganathan”*** reported in 2005(4) LW 482, this Court in para no.14, has observed as follows:

“14. The stage when the Plaintiffs evidence has been closed, the second Defendant is not justified in filing the application to receive additional written statement. The reason stated in the affidavit that the Agreement of Sale was not traceable earlier is not convincing. The lower Court has not taken note of the stage of the litigation and the delay that has occasioned and the hardship to which the Plaintiffs would be subjected. The impugned order suffers from material irregularity and is to be set aside.

“15. Therefore, the Revision Petition is allowed and the impugned Order of the Second Additional District Munsif (incharge of I Additional District Munsif), Thirukovilur in I.A.No. 533 of 2000 in O.S.No. 998 of 1991 dated 9.10.2000 is set aside. The trial Court is directed to dispose the suit in O.S.No.998 of 1991 expeditiously in accordance with law. In the circumstances of the case, there is no order as to costs. Consequently, C.M.P. No. 18297 of 2000 is closed. ”

15. In the case of ***“R.S.Nagarajan Vs. R.S.Gopalan & Others”***



reported in 2007(1) CTC 586, this Court, relying on the various judgments of this Court and Apex Court, has held that by way of filing an additional written statement would introduce altogether a new case, cannot be allowed.

The relevant paragraphs are extracted herein under:

"7. On the side of the respondents, a judgment reported in Subramanian V.Jayaraman, 1999 (3) CTC 52 has been relied upon. In the said judgment it has been clearly held as follows:

"Leave to be rejected when defendants introduce entirely different case in additional written statement so as to prejudice the other side"

12.Thus the above decisions will clearly establish that the defendant cannot raise mutually destructive pleas. In the case on hand, the petitioner now tries to introduce altogether a new case by way of filing an additional written statement. That cannot be allowed. The Court below has rightly dismissed the application filed by the petitioner and I do not find any error of jurisdiction or illegality in the said order."

16. In the case of ***"A.Manohar Prasad and Others Vs.Prasad Production Pvt Ltd"*** reported in 2019 (1) LW 54, this Court held as extracted herein under:

"9.An additional aspect that may require consideration by the trial Court, when an application is filed under Order 8



Rule 9 of the Civil Procedure Code when the trial had already commenced and the plaintiffs evidences has been completed, the evidence already let in by the plaintiff, in the absence of any plea not set forth in the original written statement, may render such evidence futile. One of the basic principle of the law of pleadings is that, before the parties go for trial, the required proof should be fully set forth in the respective cases through their pleadings to enable the trial to take a logical course, based on the pleadings already let in. By bringing in a new or additional or inconsistent pleas in the additional written statement, the plaintiff may be put to serious prejudice and hardships.

“12. It would also be pertinent to look into the reason for which the petitioners intend to file an additional written statement. According to them, they were in possession of certain material from the Internet allegedly evidencing that A.Ramesh Prasad was not the Director of the plaintiff's company in the year 1994. Such a specific plea was not pleaded in the original written statement except for vague denials in this context. While perusing the affidavit filed in support of the application filed under Order 8 Rule 9, there is absolutely no explanation as to why such a plea is sought to be raised through an additional written statement at a belated stage. Neither is there any explanation as to the reason for not having filed such an application at an earlier



stage. The gist of the application reads that the plaint was filed by A.Ramesh without any authorisation and that the averment in the plaint reveals that Mr.A.Ramesh was the Managing Director of the plaintiff's company in 1994 was false. Apart from this, the affidavit does not justify in any manner the reasons for not having raised such a plea or filed such an application at an earlier stage. I have set forth the legal position as to the necessity for adducing the reasonings seeking for filing of additional written statement at a belated stage and in the absence of any reasons, the trial Court will not be obliged or justified in exercising its discretion of granting leave to accept such a plea through an additional written statement under Order 8 Rule 9 of the Civil Procedure Code.

17. In the case of ***“KRT Ragunathan Vs. N.Subramani”*** reported in 2019 SCC OnLine Mad 5755, it was held as extracted herein under:

“7. A reading of the written statement originally filed, and the additional written statement that is now sought to be introduced clearly show the divergent stand that has been taken by the revision petitioner. The pleadings are not only inconsistent, but also totally different from the original pleadings. As observed by this Court in the 'A.Manohar Prasad'



case (cited supra) the plaintiff having completed his evidence on the basis of the original pleading would turn futile and the plaintiff will be asked to submit proof on an entire new subject of pleadings. There is also possibility of a plea to be taken that the plaintiff has come forward with inconsistent pleadings which is not permissible. In the light of the above discussion, I am of the opinion that there is no infirmity or irregularity in the order passed by the Court below. Accordingly the civil revision petition stands dismissed. No costs. Consequently connected miscellaneous petition is also closed.”

18. On a careful perusal of the judgments relied on by the learned counsel for the petitioner, it is clear that when an application is filed under Order 8 Rule 9 of CPC and when the trial had already commenced and the plaintiffs evidence has been completed and in the absence of any pleading, not set forth in the original written statement, may render such evidence futile.

19. In the present case, for the better appreciation of the case, it is necessary to extract Order 8 Rule 9 of CPC as reads under:

"9. Subsequent pleadings:- No pleading subsequent to



the written statement of a defendant other than by way of defence to set-off or counter-claims 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 of not more than thirty days for presenting the same."

20. On a bare perusal of Order 8 Rule 9 of CPC, it is clear that no pleadings subsequent to the filing of the written statement shall be presented except by the leave of the Court and the Court may at any time require a written statement or additional written statement from any of the parties and fix a time of not more than 30 days for presenting the same. As such under this provision, the discretion is vested in the Court to permit the defendant to file an additional written statement or not considering the facts and circumstances of the case. One of the basic principles of law is that the required proof should be fully set forth by the parties before starting of trial. It is true that there is no dispute in the contention that by bringing a new or additional or inconsistent plea by way of filing an additional written statement, definitely the plaintiff may be put to serious prejudice and hardship.



WEB COPY 21. But in the present case, it appears that the trial is not yet commenced. At para 8 of the order of the Court below, it was mentioned that the suit was adjourned for trial on 18.04.2014 and as the plaintiff did not appear on that day, it was dismissed. Thereafter, after the case was restored to file, the third defendant filed a petition for filing an additional written statement. Considering the fact that the trial is yet to be commenced in the original suit and the plaintiffs also did not adduce evidence, this Court comes to the conclusion that in the said circumstances, there would be no chance of causing any hardship to the plaintiff by accepting the additional written statement.

22. In all the judgments relied on by the learned counsel for the petitioners, either the trial is commenced or the evidence is closed. But in the present case, as the trial is not yet started at the time of filing of the petition to permit to file an additional written statement. As such, the judgments relied upon by the learned counsel for the petitioner are not applicable to the facts of the present case.



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23. Considering the fact that the Order 8 Rule 9 CPC itself provides discretion to the Court to permit the filing of a written statement or an additional written statement and considering the fact that in the present case, the trial is not yet started at the time of filing of the petition to permit to file additional written statement, in the considered opinion of this Court, there is no infirmity or irregularity in the order passed by the Court below to accept the additional written statement by permitting the third defendant to file an additional written statement. This Court is satisfied with the reasons stated in the order of the trial Court to allow the petition and as such, no interference is required.

24. Accordingly, this Civil Revision Petition stands dismissed.

No costs.

Consequently, connected miscellaneous petition is closed.

.07.2024

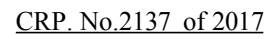
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The learned Subordinate Judge,
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