



C.R.P.(PD)No.70 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.06.2024

CORAM

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD)No.70 of 2023

and

C.M.P.No.528 of 2023

P.Subramani

.. Petitioner

Vs.

Kalaiselvi

.. Respondent

Prayer : The Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and final order, dated 17.08.2022, passed in I.A.No.180 of 2019 in O.S.No.112 of 2014 on the file of the learned II Additional Subordinate Judge at Villupuram.

For Petitioner : Mr.G.Krishna Kumar

For Respondent : M/s.G.Lavanya

ORDER

The present Civil Revision Petition arises against an order passed by the learned II Additional Subordinate Judge at Villupuram in I.A.No.180 of 2019 in O.S.No.112 of 2014, dated 17.08.2022.

2. For the sake of convenience, the parties will be referred to as per



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their ranks in the suit.

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3. The plaintiff, who is the revision petitioner, had presented O.S.No.112 of 2014 seeking relief of partition and separate possession of the suit schedule mentioned properties. The claim of the plaintiff is that he is entitled to 1/6th share of the suit properties.

4. Summons were served on the defendants and the 2nd defendant entered appearance in the suit.

5. The 2nd defendant filed a detailed written statement *inter alia* contending that she is also entitled to 1/6th share in the property and pleaded that the properties have not been described properly in the plaint and also that there is non-inclusion of the property situated in Bangalore. According to her, this misdescription and non-inclusion are fatal to the suit. In other words, the defence that there is misdescription of the property and non-inclusion of joint family properties has been taken in the written statement.

6. The matter was posted for trial and Mr.G.Krishna Kumar would



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submit that his client has already been examined in chief as well as in cross and the matter is now posted for defendants' evidence.

7. At that stage, the 2nd defendant took out an application stating that certain description of the property mentioned in the schedule had been missed out and therefore, it necessitated the filing of an additional written statement.

8. On receiving the notice of the application, the plaintiff stated that the application is belated and not only that, he had also pleaded that the properties, which had been described in Survey Nos.67/1, 67/2 and 37/3 of Vembi Village, had already been sold by the 2nd defendant and the 4th defendant. He would plead that the entire idea of filing this application seeking permission to file an additional written statement is only to prolong the trial till the disposal of the proceedings that had been initiated with respect to the properties in Bangalore in O.S.No.7359 of 2013 on the file of the City Civil Court at Bangalore.



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9. The learned trial Judge, on consideration of the petition and counter, came to the conclusion that the plea of misdescription and non-inclusion of the property not having been taken and since the defendants are giving additional information of the same, no prejudice will be caused to the plaintiff and allowed the application. Challenging the same, the present Civil Revision Petition has been presented before this Court.

10. Heard Mr.G.Krishna Kumar, appearing on behalf of the petitioner and M/s.G.Lavanya, appearing on behalf of the respondent. I have carefully considered the arguments on either side.

11. An application under Order VIII Rule 9 of the Code of Civil Procedure enables the Court to receive an additional or clarificatory information that a party wants to bring to the notice of this Court. This requires the leave of the Court and normally, the leave should be liberally construed. This is because, the party must be able to be put forth all the defences that have not been taken or which he/she wants to clarify before the Court.



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12. The Code of Civil Procedure is a code of fairness which incorporates into it, the principles of natural justice. Therefore, liberal construction has to be given to it. However, in the facts of the present case, a reading of the original statement as well as the additional statement would go to show that, apart from the cosmetic expansion of the defences that has already been taken, the additional written statement does not give any new details. The two primary contentions that have been taken are the misdescription of the properties situated in Vembi village and non-inclusion of the properties situated in Bangalore. Both these pleas are already found in the original written statement.

13. It is the duty of the plaintiff to prove the case and the defendant can go through all the defences available to him/her and it is the duty of the plaintiff to discharge, to the satisfaction of the Court, the pleas taken by him. Yet, it is not open to the defendant to keep repeating *ad nauseam*, the pleas already taken in the original statement by way of an additional statement.

14. As stated above, any new plea or clarificatory plea with respect to the defence already taken is more certainly open to a party, but to file the



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same written statement in a different language is not open under Order VIII

Rule 9 of the Code of Civil Procedure.

15. As already discussed in the previous paragraph, the defences taken by the defendants in the additional written statement are already covered in Paragraph Nos.5 to 7 of the original statement. Therefore, I feel that the application taken out for filing an additional written statement under Order VIII Rule 9 of the Code of Civil Procedure seems to be one in order to enable the 4th defendant to complete the proceeding in O.S.No.7359 of 2013 on the file of the City Civil Court at Bangalore.

16. The law that had been applied by the learned Judge that Order VIII Rule 9 of the Code of Civil Procedure requires liberal construction is perfectly justified but that does not enable the Court, as pointed out by me, to permit the defendants to state what she has already stated.

17. In the light of the above discussion, the order of the learned II Additional Subordinate Judge at Villupuram in I.A.No.180 of 2019 in



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O.S.No.112 of 2014, dated 17.08.2022, is set aside. The application filed for receiving the additional written statement will stand dismissed. The suit being of the year 2014, the learned Judge will endeavor to complete the proceedings on or before 30.11.2024.

18. However, as this plea of non-inclusion of the Bangalore property as well as the misdescription of the properties situated in Vembi Village had already been taken by the defendant in the original statement, she will be entitled to cross examine the plaintiff on these pleas if the plaintiff has not already been cross examined on those points. Granting that liberty with respect to cross examination, the Civil Revision Petition stands allowed. No costs. The connected Civil Miscellaneous Petition is closed.

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Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No

V. LAKSHMINARAYANAN, J.



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To

The learned II Additional Subordinate Judge,
Villupuram

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and
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