



C.RP(MD)No.1376 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 23.07.2024

CORAM

THE HONOURABLE MR JUSTICE D.BHARATHA CHAKRAVARTHY

C.R.P(MD)No.1376 of 2024

and

C.M.P(MD).No.8086 of 2024

Muthulakshmi

... Petitioner

Vs.

1.S.Vanith

2.S.Jeevabharathi

...Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 15.02.2024 passed in I.A.No.28 of 2023 in O.S.No.43 of 2022 on the file of the District Munsif Court, Karaikudi.

For Petitioner

: Mr.V.Meenakshisundaram

For Respondents

: No appearance

ORDER

This civil revision petition is filed to set aside the fair and decreetal order dated 15.02.2024 passed in I.A.No.28 of 2023 in O.S.No.43 of 2022 on the file of the District Munsif Court, Karaikudi.



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2. By the said order, the Interlocutory Application filed by the petitioner was dismissed by the trial Court. In the said Interlocutory Application, the petitioner has prayed for permission to file additional written statement. It can be seen that the suit in O.S.No.43 of 2022 is filed by the respondents/ plaintiffs for partition and separate possession of their respective 1/3 share in the suit schedule property. According to the plaintiffs, both the plaintiffs have 1/3 share each in the suit schedule property and the first defendant had 1/3 share in the suit schedule property. However, high-handedly the first defendant has alienated the suit schedule property in favour of the second defendant. Making such averments originally the suit was filed. In the suit, the second defendant filed a written statement in which he has not only pleaded about his purchase from the first defendant, but also stated that even before the filing of the suit, he has made further alienation in favour of the third and fourth defendants. Pursuant thereto, the plaintiffs filed an application to implead the third and fourth defendants in the suit, which was allowed by the trial Court. Upon being impleaded, the third and fourth defendants originally adopted the written statement filed by the second defendant. Thereafter, the parties went into trial.

3. When the plaintiffs' side was closed and the matter was posted for defendants' side evidence, the present application is filed to receive the



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additional written statement. A perusal of the proposed additional written statement, it can be seen that the fourth defendant wanted to mention about the details of her purchase and also wanted to raise a plea of limitation with reference to her alienation, since the same was prior to the date of filing of the suit. The trial Court, considering the fact that the application is belatedly filed, dismissed the application. As against which, the present civil revision petition is filed before this Court.

4. Mr.V.Meenakshisundaram, learned counsel appearing on behalf of the petitioner would submit that though originally the matter was in the defendants' evidence stage, subsequently, since the plaintiffs' side itself was closed on account of the default of the plaintiffs, they filed a re-open and re-call application. Pursuant to which, the Court allowed the same and re-opened the plaintiffs' side evidence and now, the case is at the stage of plaintiffs' side evidence only. As far as the additional written statement is concerned, nothing contained in the additional written statement is diametrically opposite or contrary to the original written statement. When the defendants three and four are belatedly impleaded, they adopted the written statement, which is already filed, now, they only wanted to give additional particulars and to raise the plea of limitation.



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5. I have considered the said submission made by the learned counsel for the petitioner and perused the materials record of the case.

6. When the alienation in favour of the fourth defendant was prior to the filing of the suit and when the plaintiffs have mentioned the alienation in favour of the second defendant alone and have not considered further alienations in favour of the third and fourth defendants at the time of filing of the suit and have impleaded them only subsequently, I am of the view that one opportunity can be granted to the fourth defendant to file additional written statement. Though an additional plea of limitation is also made, as far as the other averments are concerned, the same relate to the particulars of the sale and details of the property and its possession. Upon receipt of the additional written statement, since the matter is in the plaintiffs' evidence stage, additional issues if any can be framed and the suit can be proceeded further. In view thereof, the Civil Revision Petition is allowed on the following terms:-

(i) The order dated 15.02.2024 made in I.A.No.28 of 2023 in O.S.No.43 of 2022 on the file of the District Munsif Court, Karaikudi, shall stand set aside;



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(ii)I.A.No.28 of 2023 in O.S.No.43 of 2022 shall stand allowed. The trial

Court shall take on file the additional written statement, which is filed along with the application. The plaintiffs will also be entitled to file reply if any to the additional written statement. Thereafter, the trial Court shall frame additional issues if any and proceed further with the trial.

No costs. Consequently, connected Miscellaneous Petition is closed.

23.07.2024

NCC:Yes/No

Index:Yes/No

Rmk

To

1.The District Munsif Court, Karaikudi.



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D.BHARATHA CHAKRAVARTHY, J.

Rmk

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