



CRP(MD)No.1425 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 08/03/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

CRP (MD) No.1425 of 2022

and

CMP (MD) No.5921 of 2022

K.Gokul,
S/o.T.R.Kannan,
Founder of Sathu T.Ramasamy Naicker
Avudaiammal Trust
Represented by its Legal Manager,
K.Ramaraj : Petitioner/Plaintiff/
9th Defendant

Vs.

S.Srinivasan (Poosari) (died)

1.S.Villi Alwar
2.S.Gopal
3.S.Valarmathy
4.S.Nandagopal
5.S.Ashok Kumar
6.S.Anita
7.S.Sankar Kumar : Respondents/Respondents/
Plaintiffs

PRAYER:- Civil Revision Petition has been filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order, dated 10/06/2022 passed by the District Munsif Court, Rajapalayam made in IA No.1 of 2022 in OS No.158 of 2019.

For Petitioner : Mr.C.Arulvadivel @ Sekar

For Respondents : Mr.H.Arumugam



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O R D E R

WEB COPY This Civil Revision Petition has been filed seeking to set aside the fair and decreetal order, dated 10/06/2022 passed by the District Munsif Court, Rajapalayam, in IA No.1 of 2022 in OS No.158 of 2019.

2.The facts in brief:-

Suit in OS No.158 of 2019 was filed seeking the relief of declaration that the sale deed, dated 24/03/2010 is null and void and for consequential injunction. The defendants entered appearance and pending further process IA No.1 of 2022 was taken out by the 9th defendant under Order 8 Rule 9 CPC to receive the additional written statement. That came to be dismissed by the trial court. Against which, this civil revision petition is preferred.

3.The petition is presented by the petitioner with the following averments:-

On the side of the plaintiff, PW1 was examined and posted for cross examination. While perusing the documents for preparation of cross examination, it was found that some important facts with regard to the



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particulars of the power of attorney and the sale deed with reference to the limitation were omitted to be put. That was brought to the notice only in the above said event. So to set right the above said particulars, additional written statement must be received.

4.That was resisted by the respondents stating that the suit was filed in 2016, after a lapse of six years only the trial was taken up. During the course of the cross examination, such a permission cannot be granted. Apart from that, it is also stated that no proper reason is assigned.

5.The trial court after hearing both sides, dismissed the petition stating that no proper reason is assigned and so dismissed the petition. Against which, this civil revision petition is preferred.

6.Order VIII Rule 9 CPC reads as follows:-

"9. Subsequent pleadings. -No pleading subsequent to the written statement of a defendant other than by way of defence to set-off or counter-claim shall be presented except by the leave of the Court and upon such terms



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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."

7. So this provision makes it clear that for filing the additional written statement, leave of the court is required. Here, the leave of the court is requested on the ground that while preparing the cross examination points, omission of those facts with regard to the particulars of the power of attorney and the limitation point were brought to his notice. On that account, he wants the additional written statement to be filed.

8. But those particulars were already available with the defendants at the time of filing of the written statement. It is not a new fact which was brought to his notice subsequent to the original pleadings.

9. Order VIII Rule 2 CPC reads as under:-

"2. New facts must be specially pleaded.-The defendant must raise by his pleading all matters which show the suit not be maintainable, or that the transaction is either void or voidable in



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point of law, and all such grounds of defence as, if not raised, would be likely to take the opposite party by surprise or would raise issues of fact not arising out of the plaint, as, for instance, fraud, limitation, release, payment, performance, or facts showing illegality."

10.The limitation point ought to have been raised by the petitioner at the time of filing the written statement. Having failed to bring to the notice of this court, now it is too late for the petitioner to put forth such a plea that too at the time of cross examination of PW1. So I find that no reason to entertain the additional written statement is made out by the petitioner. The order passed by the trial court does not suffer from any illegality or irregularity.

11.In the result, this civil revision petition is **dismissed.** No costs. Consequently, connected Miscellaneous Petition is closed.

08/03/2024

Index:Yes/No
Internet:Yes/No

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WEB COPY To,

The District Judge,
Tuticorin.



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G.ILANGO VAN, J

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