



C.R.P.(MD)No.3085 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 30.11.2023

Pronounced on : 09.01.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)No.3085 of 2023

1. Elumalai

Pappa (Died)

2. Rengasamy @ Durairaj

3. Ramasamy

4. Subramani

... Petitioners/
Petitioners/
Defendants

Vs.

Oomaiyan (Died)

1. Ellammal

Govindharaj (Died)

2. Anbazhagan

3. Jothilakshmi

4. Minor Vijayaram



C.R.P.(MD)No.3085 of 2023

5. Minor Devadharshini

(Minor R4 & R5 represented through their
next friend/mother Jothilakshmi/R3)

... Respondents/
Respondents/
Plaintiffs

Prayer : This Civil Revision Petition filed under Article 227 of Constitution of India, to allow this civil revision petition by setting aside the fair and decreetal order passed in I.A.No.6 of 2023 in O.S.No.17 of 2012 dated 28.08.2023 on the file of the District Munsif Court, Keeranur.

For Petitioners : Mr.A.Thiyagarajan

ORDER

The Civil Revision Petition is directed against the order passed in I.A.No.6 of 2023 in O.S.No.17 of 2012 dated 28.08.2023 on the file of the District Munsif Court, Keeranur, dismissing the application filed under Order 8 Rule 9 C.P.C.

2. The respondents/plaintiffs have filed the above suit to declare that the suit properties are belonging to them and for consequential permanent injunction restraining the revision petitioners/defendants and their men from in any manner interfering with the peaceful possession and



C.R.P.(MD)No.3085 of 2023

WEB COPY

enjoyment of the suit properties. When the suit was in part-heard stage, the above application came to be filed seeking permission to file the additional written statement.

3. The case of the revision petitioners/defendants is that they have omitted to mention some aspects in the original written statement, that the above aspects are very much necessary to decide the issues involved in the suit and that therefore, it has become just and necessary to receive the additional written statement, otherwise the revision petitioners/defendants will be put to irreparable loss and hardship.

4. The respondents/plaintiffs have filed a counter statement raising serious objections stating that the revision petitioners/defendants have filed their original written statement on 11.06.2013 and the present additional written statement came to be filed after 10 years, that the revision petitioners/defendants have taken pleas in their additional written statement, which are totally inconsistent and contradictory to the pleas raised in the original written statement, that the revision petitioners/defendants have not come with clean hands and that therefore, the application is liable to be dismissed.



C.R.P.(MD)No.3085 of 2023

WEB COPY

5. It is evident from the records that the revision petitioners/defendants have filed their original written statement on 11.06.2013, that issues came to be framed on 20.02.2017, that the respondents/plaintiffs have then filed an application in I.A.No.554 of 2017 for amending the plaint and the same was allowed on 11.09.2017, that though opportunity was given to the revision petitioners/defendants for filing the additional written statement consequent to the amendment of the plaint, they have not chosen to file any additional written statement, that the trial was commenced on 21.02.2018, that when the case was pending for P.W.1 cross-examination, the second defendant was reported dead and steps were taken, that subsequently, the third plaintiff was reported dead and since steps were not taken, the suit was dismissed for default on 03.11.2018, that the suit was restored to file as per the order passed in I.A.No.201 of 2022 dated 22.06.2022, that thereafter, steps for the deceased third plaintiff were taken, that when the plaint was consequently amended, the first defendant has filed additional written statement and that when the suit was pending in part-heard stage, the above application came to be filed.

6. As rightly observed by the learned trial Judge, though the first defendant has filed the additional written statement consequent to the



C.R.P.(MD)No.3085 of 2023

amendment of the plaint subsequent to the death of third plaintiff, they have not raised the pleas now raised in the proposed additional written statement.

7. The respondents, in their counter statement, would mainly contend that the pleas now raised in the additional written statement are totally contradictory and inconsistent to the defence taken in the written statement as well as the first additional written statement, that the revision petitioners/defendants cannot be allowed to file such an additional written statement at this point of time and that the revision petitioners/defendants cannot be allowed to raise new pleas to fill up the lacuna.

8. The learned counsel appearing for the revision petitioners would submit that the pleas now raised were omitted to be raised in the earlier written statement, that the above pleas now raised are very much essential for deciding the issues framed in the suit and that no prejudice will be caused to the respondents/plaintiffs, if the additional written statement is received.



C.R.P.(MD)No.3085 of 2023

WEB COPY

9. It is pertinent to note that the revision petitioners/defendants have also filed another application in I.A.No.5 of 2023 under Order 6 Rule 17 C.P.C. for amending the written statement and the learned trial Judge, after enquiry, has passed an order dated 28.08.2023 dismissing the said application. It is evident from the records that the present application in I.A.No.6 of 2023 and the amendment application in I.A.No.5 of 2023 were filed at the same time and after enquiry, both the applications were dismissed vide separate orders dated 28.08.2023. The revision petitioners/defendants have also preferred an another revision in C.R.P.(MD)No.3082 of 2023 challenging the dismissal of the amendment application in I.A.No. 5 of 2023 and this Court, vide order dated 22.12.2023, dismissed the revision and thereby confirmed the order of the trial Court.

10. It is evident from the records that the revision petitioners/defendants, in the amendment application, has sought to add some new pleas replacing some of the pleas in the earlier written statement, but in the present application, they have sought permission to file additional written statement incorporating the new pleas already canvassed in the amendment application.



C.R.P.(MD)No.3085 of 2023

WEB COPY

11. In the case of **Murthi Gounder Vs. Karuppanna Gounder** reported in **AIR 1976 Mad 302**, this Court has held as follows;

“9. This is not a case where by mere inadvertence, certain pleas were not put forward. This is a case where nearly 2 years after having filed his written statement, the first defendant had acquired some further information and wanted to set up a case which is different from the case which he had originally set up in his written statement. Considering the stage at which such an application has been filed, undoubtedly, prejudice would be caused to the plaintiff who will now be forced to file a reply statement and as a consequence thereof, fresh and different issues will have to be framed and the trial would have to begin once over again.”

12. In **N.Srinivasan Vs. Muthammal** reported in **(1998) III MLJ 466**, a learned Judge of this Court has held that “.... application for filing additional written statement raising alternative plea cannot be allowed since it raises inconsistent or alternative plea depriving plaintiff's benefit of statutory presumption”

13. In the order passed in C.R.P.(MD)No.3082 of 2023, this Court has referred the earlier stand of the revision petitioners/defendants and the



C.R.P.(MD)No.3085 of 2023

proposed pleas raised. More importantly, as rightly observed by the learned trial Judge, the above application came to be filed after 10 years since the filing of the original written statement and they have not offered any reason or explanation for not raising the present pleas in the original written statement or in the additional written statement filed earlier. Considering the entire facts and circumstances of the case, as rightly observed by the learned trial Judge, the above application came to be filed only to drag on the proceedings. Hence, this Court is not inclined to interfere with the impugned order. Consequently, this Court concludes that the revision is devoid of merit and the same is liable to be dismissed.

14. In the result, this Civil Revision Petition is dismissed. No costs.

09.01.2024

NCC :yes/No
Index :yes/No
Internet:yes/No
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C.R.P.(MD)No.3085 of 2023

To

1. The District Munsif Court,
Keeranur.
2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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C.R.P.(MD)No.3085 of 2023

K.MURALI SHANKAR,J.

csn

Pre-Delivery Order made in
C.R.P.(MD)No.3085 of 2023

Dated : 09.01.2024