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C.R.P.No.2187 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.09.2025

CORAM:

THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN

C.R.P.No.2187 of 2025

and

C.M.P.No.12759 of 2025

P.K.V.Mohan

... Petitioner/
Petitioner/5th Defendant

Vs.

1.M.Usha Nandhini

... 1st Respondent/
1st Respondent/Plaintiff

G.Mohammed Ismail (Died)

2.M.Altaf Ahamed

... 2nd Respondent/
3rd Respondent/2nd Defendant

3.Afsar Banu

... 3rd Respondent/
4th Respondent/3rd Defendant

4.Asraf Banu @ Banumathy

... 4th Respondent/
5th Respondent/4th Defendant

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order in I.A.No.7 of 2024 in O.S.No.266 of 2003 dated 28.03.2025 on the file of the learned III Additional Subordinate Judge, Coimbatore.



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For Petitioner : Mr.C.Deepak Kumar

For R1 : No appearance

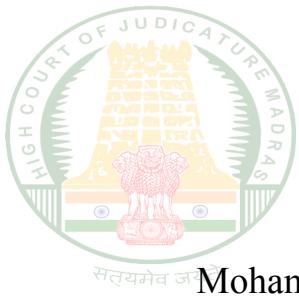
For R2 to R4 : Mr.L.Mouli

ORDER

This Civil Revision Petition has been filed seeking to set aside the fair and decreetal order dated 28.03.2025 made in I.A.No.7 of 2024 in O.S.No.266 of 2003 on the file of the learned III Additional Subordinate Judge, Coimbatore.

2. The revision petitioner/5th defendant filed I.A.No.7 of 2024 in O.S.No.266 of 2003 under Order VIII Rule 9 r/w Section 151 CPC seeking leave to file an additional written statement. The said application was dismissed by the trial Court. Aggrieved thereby, the present revision has been filed.

3. The suit in O.S.No.266 of 2003 was originally filed by one M.Usha Nandhini, wife of the revision petitioner, against G.Mohammed Ismail, M.Altaf Ahamed, Afsar Banu and Asraf Banu @ Banumathy, seeking the relief of specific performance. During the pendency of the suit,



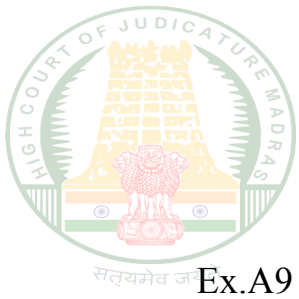
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Mohammed Ismail died, and his legal representatives were impleaded as defendants 2 to 4. At their instance, the revision petitioner was impleaded as the 5th defendant. Thereafter he filed his written statement and the trial commenced.

4. On the side of the plaintiff, PW-1 to PW-3 were examined and duly cross-examined by all defendants, including the 5th defendant. On the side of the defendants, the 5th defendant was examined as DW-1 and cross-examined by defendants 1 to 4. The 2nd defendant was examined as DW-2 and cross-examined by the 5th defendant. At this stage, the 5th defendant filed I.A.No.7 of 2024 in O.S.No.266 of 2003 seeking leave to file an additional written statement.

5. Learned counsel for the revision petitioner/5th defendant submitted that only during the cross-examination of DW-1, the facts sought to be pleaded came to the knowledge of the revision petitioner. Hence, the omission in the original written statement was neither wilful nor wanton. During the said cross-examination, the revision petitioner came to know that the agreements dated 15.04.1994 and 01.09.1995, already marked as



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Ex.A9 and Ex.A10, had not been pleaded in the written statement. These agreements were executed by the 2nd defendant's father in favour of the 5th defendant and are crucial to the petitioner's case. The documents referred to in the proposed additional written statement had already been marked on the side of PW-1. However, the Court below erroneously concluded that the agreement dated 15.04.1994 executed by the 2nd defendant in favour of the revision petitioner was unrelated to the present suit.

6. Per contra, learned counsel for respondents 2 to 4 submitted that three witnesses were examined on the plaintiff's side, and they were duly cross-examined by defendants 1 to 4 as well as by the 5th defendant. The 5th defendant was examined as DW-1 and cross-examined by defendants 1 to 4. The 2nd defendant was examined as DW-2 and cross-examined by the 5th defendant. After seeking time for further cross-examination, the application for additional written statement came to be filed. It is further submitted that the facts pleaded in the original written statement are entirely different from those in the proposed additional written statement, and the same amounts to introducing a new case, which is impermissible in law. Thus, the application is unsustainable.



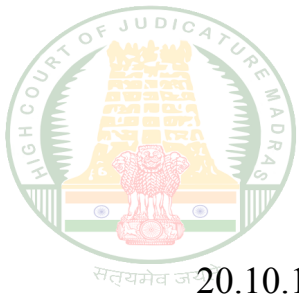
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7. It is seen from the records that the revision petitioner/5th defendant was not originally a party to the suit and was impleaded only at the instance of defendants 2 to 4. The revision petitioner thereafter filed his written statement.

8. A perusal of the written statement filed by the 5th defendant, in para No.6, shows that one Mohammed Ismail had executed a registered Power of Attorney dated 09.01.1985 in favour of the 5th defendant with regard to the suit property. In pursuance thereof, he executed a sale agreement in favour of the plaintiff with respect to the suit property on 14.04.1996 for a sale consideration of Rs.4,87,000/-, out of which a sum of Rs.3,00,000/- was paid as advance. The balance sale consideration of Rs.1,87,000/- was payable to the 5th defendant as the Power of Attorney holder of the said Mohammed Ismail. The plaintiff further paid Rs.1,00,000/- on 15.05.1995 and Rs.87,000/- on 18.07.1996.

9. It is also seen from para No.7 that Mohammed Ismail, without prior notice, cancelled the Power of Attorney by a cancellation deed dated



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20.10.1997. Due to such cancellation, the 5th defendant was unable to execute the sale deed in favour of the plaintiff on behalf of his principal, Mohammed Ismail.

10. Further, a perusal of the proposed additional written statement shows that in para No.5, it is stated that Mohammed Ismail had agreed to convey the suit property to the revision petitioner/5th defendant and executed a sale agreement dated 15.04.1994. Under the said agreement, Mohammed Ismail, the 1st defendant, fixed the sale consideration at Rs.4,00,000/- and received an advance of Rs.1,00,000/- by cheque drawn on Bank of India.

11. It is further stated that since Mohammed Ismail, the 1st defendant, was unable to obtain the conveyance deed from the Coimbatore Municipal Corporation, he received a further sum of Rs.25,000/- on 06.07.1994 by cheque and Rs.1,10,000/- in cash on 14.07.1994, and endorsed on the reverse of the sale agreement extending the time for another three months.



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12. It is pertinent to extract Order VI Rule 17 of CPC:

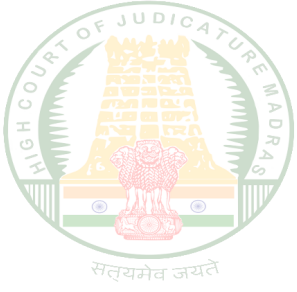
“13. Amendment of pleadings – The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

13. In the present case, the revision petitioner/5th defendant has attempted to introduce a new case, contrary to his earlier pleadings, and seeks to rely upon the sale agreement between the 1st and 5th defendants, which has no relevance to the plaintiff's suit claim. Therefore, in view of the proviso to Order VI Rule 17 of CPC, the revision petitioner cannot be permitted to raise such a plea after commencement of trial.

14. Having regard to the admitted facts, this Court is of the considered view that the Trial Court rightly rejected the application seeking leave to file an additional written statement and finds no merit in the petition.

M.JOTHIRAMAN, J.



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WEB COPY 15. In the result, this Civil Revision Petition stands dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

01.09.2025

cda

To

The III Additional Subordinate Judge,
Coimbatore.

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