



WEB COPY

CRP. No.4129 of 2024



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **27.06.2025**

CORAM

THE HONOURABLE MR JUSTICE P.B. BALAJI

CRP. No.4129 of 2024

and CMP. No.22656 of 2024

1.Senthamilselvi

2.Aruna

Petitioner(s)

Vs

1.Ramalingam

2.Rajendiran

3.Sakthivel

4.Alamelu

5.Rani

6.Kolanji

Respondent(s)

PRAYER: This Civil Revision Petition under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 21.02.2024 in I.A. No.135 of 2024 in O.S. No.153 of 2017 on the file of the Subordinate Court, Thitagudi as illegal, incompetent and without jurisdiction.

For Petitioners : Mrs.V.Srimathi

For Respondents : Mr.T.Sezhiyan



ORDER

This revision is at the instance of the plaintiffs challenging the permission granted to the defendants to file an additional written statement. The Trial Court has allowed the Application filed on behalf of the defendants 3 to 5, 8, 11 and 12 to receive the additional written statement.

2. Heard Mrs.V.Srimathi, learned counsel for the petitioners and Mr.T.Sezhiyan, learned counsel for the respondents.

3. The learned counsel for the petitioners would submit that the Trial Court having rightly found that the respondents were set exparte and that the suit is pending from 2009 and the respondents having not raised the issue of any Will all these years, ought to have dismissed the Application instead of allowing it on condition viz., costs of Rs.3,000/- to each of the petitioners (totalling in all Rs.6,000/-).

4. Mrs.V.Srimathi, learned counsel for the petitioners would place reliance on the decision of this Court in the case of *A.Manohar Prasad and others Vs. Prasad Production Private Limited, Rep by its Managing Director, A.Ramesh Prasad*, reported in (2018) SCC Mad 7100, where this Court relying on earlier judgments under Order VIII Rule 9 CPC



held that when the additional written statement is sought to be filed belatedly and after plaintiffs' evidence had been closed, on the facts of the case, the Trial Court had rightly dismissed the Application to receive an additional written statement. She would also state that even in the present case, despite noting that the suit was filed in the year 2009 and several Applications have been pending for more than a decade and that the petitioners have shown a lethargic attitude, the Court ought not to have granted permission to the defendants to file an additional written statement.

5. Mrs.V.Srimathi, would further contend that the object of the Order VIII Rule 9 CPC is to only bring to light, facts which are inadvertently omitted or to clarify any facts that have already been set out in the earlier written statement and the Rule cannot be availed of to supplant the original written statement. She would further state that in any event, after the allowing of additional written statement, a new plea has been putforth by the defendants and when such additional pleadings are sought for, after commencement of trial, she would submit that the Courts have to go slow and not entertain the same liberally.

6. Per contra, Mr.T.Sezhiyan, learned counsel appearing for the contesting respondents viz., the defendants who sought to file the



additional written statement, would state that the defendants only intended to bring to light, the Will executed by the father and as it would have a material bearing on the case and the additional written statement was necessitated. He would further submit that the Trial Court has rightly exercised discretion in allowing the Application and the same does not warrant interference.

7. I have carefully considered the submissions advanced by the learned counsel on either side.

8. No doubt, the suit has been pending from 2009. The Will of the father of the contesting respondents is said to have been executed only on 24.05.2011. The Testator is a party defendant in the suit and only on his death, the Will takes effect and therefore, it cannot be contended that the delay would have to be reckoned from the date of filing of the written statement. It is also contended by Mrs.V.Srimathi, that the father of the defendants, who are now claiming under Will, himself did not contest the suit and had in fact prayed for a decree being passed as prayed for by the plaintiffs. She would therefore contend that in view of the same, the present additional written statement cannot be permitted to be received.

9. However, ongoing through the written statement filed by the



father of the contesting defendants viz., the respondents herein, I am able to see that since the plaintiffs had accepted that the said defendant had a share in the suit property, he did not chose to contest the suit. It is only in respect of his admitted share, the Will has been executed. Therefore, I am unable to countenance the submissions of the learned counsel for the petitioners that there is an inordinate delay. The suit being one for partition and the particular defendants claiming under the Will, one of the defendants who admittedly has a share in the suit property, should be allowed to putforth their contentions regarding the said Will and the consequent benefits they derive under the said Will. The Trial Court has rightly exercised discretion in favour of the respondents, permitting the additional written statement to be received. At the same time, the cost imposed is not commensurate to compensate the plaintiffs. Hence, while dismissing this Civil Revision Petition, the respondents are directed to pay an additional costs of Rs.5,000/- (Rupees Five Thousand only) (Rs.2,500/- each of the plaintiffs) over and above Rs.3,000/- each to the plaintiffs, totalling in all Rs.6,000/- which has already been ordered by the Trial Court.

P.B.BALAJI, J.,

rkp



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10. With the above direction, this Civil Revision Petition is dismissed. Consequently, connected Miscellaneous Petition is also

closed. No costs.

27.06.2025

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Index : Yes / No

Internet : Yes / No

To:

The Subordinate Judge, Thitagudi

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