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C.R.P.NO.2584 OF 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 15 / 12 / 2025

ORDER DELIVERED ON: 06 / 01 / 2026

CORAM :

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

C.R.P.NO.2584 OF 2023

AND

C.M.P.NO.15957 OF 2023

Neelagandan,
D.No.10/141-A, Sanarpalayam,
Palakarai Village,
Perundurai Taluk,
Erode District.

... Petitioner/ Petitioner/
Defendant

Vs.

Ammasai Gounder ,
Thirumal Thottam,
Thudupathi Village,
Perundurai Taluk,
Erode District.

...Respondent/Respondent/
Plaintiff

PRAYER : Civil Revision Petition filed under Article 227 of Constitution of India, 1950, praying to set aside the Fair and Final Order dated June 13, 2023 made in I.A.No.3 of 2023 in O.S.No.147 of 2017 on the file of Sub Court, Perundurai by allowing the Civil Revision Petition.

For Petitioner : Mr.I.Pragadeesh
for Mr.S.Kaithamalai Kumaran



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For Respondent : Mr.C.Ramaraj

ORDER

Feeling aggrieved by the Dismissal Order dated June 13, 2023 passed by 'the Sub Court, Perundurai' [hereinafter referred to as the 'Trial Court'], in the petition in I.A.No.3 of 2023 filed by the Defendant in the Original Suit under Order VIII Rule 9 of 'the Code of Civil Procedure, 1908' ('CPC' for short) praying to grant leave to file Additional Written Statement, this Civil Revision Petition has been filed.

2.The Revision Petitioner herein is the Defendant and the Respondent herein is the Plaintiff in the Original Suit in O.S.No.147 of 2017 on the file of the Trial Court.

3.The Respondent / Plaintiff filed the aforesaid Suit seeking delivery of possession of the Suit Property from the Defendant.

4.The Plaintiff's case is that the Defendant was the owner of the Suit Property vide registered Sale Deed dated January 26, 1976. In order to deal with the Suit Property, the Defendant executed a General Power of Attorney Deed dated May 30, 2007 in favour of the Plaintiff's wife-

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Muthulakshmi. On the same date, the Defendant also executed a registered Sale Agreement in favour of the Plaintiff. In view of the Power of Attorney Deed, the Power Agent executed a registered Sale Deed dated March 18, 2009 in respect of the Suit Property for a sum of Rs.1,50,000/- in favour of the Plaintiff. Thereafter, the Defendant requested the Plaintiff to permit him to occupy the Suit Property as a tenant. The Plaintiff allowed the Defendant to occupy the Suit Property for monthly rent fixed at Rs.2,000/-. However, the Defendant failed to pay the agreed rent and also refused to vacate the Suit Property. Hence, the Suit for delivery of possession. The Suit was filed in the month of August 2017.

5.The Defendant filed a Written Statement on March 05, 2018 stating that the Defendant's wife was unwell, and hence to meet out the medical expenses, the Defendant borrowed a sum of Rs.95,000/- (Rupees Ninety Five Thousand only) from the Plaintiff's wife-Muthulakshmi on May 30, 2007 and executed a Sale Agreement on the same day only as a security for the said loan transaction. Further, at the instance of the Plaintiff's wife-Muthulakshmi, he also executed a General Power of Attorney Deed for the same purpose of security for the loan transaction. With a view to defeat and defraud the Defendant's right and title over the



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Suit Property, the Plaintiff's wife-Muthulakshmi and the Plaintiff colluded and fraudulently created the alleged Sale Deed dated March 18, 2009. The said fact came to the Defendant's knowledge only on the receipt of pre-suit notice dated October 1, 2015 issued by the Plaintiff's wife-Muthulakshmi. The Defendant is liable to pay only a sum of Rs.1,47,000/- (Rupees One Lakh Forty Seven Thousand only) inclusive of interest to the Plaintiff's wife-Muthulakshmi as on the date of written statement. When the Defendant tendered the aforesaid amount, the Plaintiff and his wife refused to receive the said amount. The Defendant is ready and willing to deposit before the Court the principal amount of Rs.95,000/- along with accrued interest at the rate of 12% per annum from October 04, 2015 till the date of filing the Suit. The Defendant filed a complaint against the Plaintiff's wife in Criminal Miscellaneous Petition No.1772 of 2016 and the same was dismissed as the dispute is civil in nature. Thereafter, the Defendant preferred an appeal in Criminal Revision Petition No.381 of 2016 and the same was also dismissed. The Defendant is in possession and enjoyment of the Suit Property and he never handed over the possession of the Suit Property to the Plaintiff. Accordingly, he prayed to dismiss the Suit.

6. Issues were framed on February 26, 2018. Then the Plaintiff



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filed a reply to the Written Statement on July 26, 2018 with the leave of the Court. Thereafter, additional issues were framed on July 10, 2018, trial commenced on November 18, 2019 and the Plaintiff's side evidence was closed on March 16, 2020. In that stage, on January 24, 2023, the Defendant filed an application under Order VIII Rule 9 of CPC. After hearing both sides, the Trial Court dismissed the Interlocutory Application in I.A.No.3 of 2020. The operative portion of the Order reads thus:

“13)Therefore, by way of additional written statement, the defendant has repeated some pleadings in the original written statement and also raised one contrary pleading. Therefore, the additional pleadings at this belated stage if allowed to be filed will only prolong the trial and will in no way help this Court to arrive at an informed decision. Even if these additional pleadings is allowed to be filed, this would not have any impact on the case of the defendant because all these pleadings were already made. The formal denial in respect of the para 14 of the reply statement is also not required because it is all along the case of the defendant that he has not received the alleged sale consideration of Rs.1,50,000/- said to have been paid by the plaintiff to his wife. Therefore, no difference will



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be made even if the additional pleadings is allowed to be filed. On the contrary, allowing this petition would result only in delay of trial proceedings and nothing else. Considering the fact that, the suit is pending for more than 7 years, and the suit is at the state of further Dws, this Court is of the considered view that the petition deserves to be dismissed. Hence, at this stage, this Court finds no merit in the petition and the petition is liable to be dismissed.

*14) In the result this petition is dismissed.
No costs.”*

7. Feeling aggrieved by the Dismissal Order, the Defendant therein has preferred this Civil Revision Petition.

8. Mr. I. Pragadeesh appearing on behalf of Mr. S. Kaithamalai Kumaran, learned Counsel on Record for the Revision Petitioner / Petitioner / Defendant submits that the Defendant neither withdrew the admission made in the Original Written Statement nor introduced a new plea by way of an Additional Written Statement sought to be filed. On the other hand, the Defendant wanted to elaborate on the averments made



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in the Original Written Statement by way of the Additional Written Statement. The Trial Court in its Order *inter alia* has stated that in the Original Written Statement, the Defendant averred that he was ready and willing to deposit before Court the alleged principal amount of Rs.95,000/- with accrued interest at the rate of 12% per annum from October 04, 2015. In the Additional Written Statement sought to be filed, the Defendant has averred that he paid the interest till 2016 for a sum of Rs.95,000/-. The aforesaid pleading is inconsistent with the earlier pleading. Though the plea is inconsistent, the Defendant at the time of trial is entitled to select either one of the pleas to prove his case. Hence, the findings of the Trial Court are not correct. He further submits that in appropriate cases, Order VIII Rule 9 Petition can be allowed even in appellate stage and hence, the Trial Court is not right in observing that the Petition is filed belatedly. In short, the core contention of the learned Counsel is that the Defendant is well within his rights to elect either one of the inconsistent plea at the time of trial. Accordingly, he prays to allow this Civil Revision Petition and set aside the Trial Court's Order and grant leave to file the Additional Written Statement. In support of his arguments, he would rely upon the following Judgments:

(i). ***Radhabai Ammal's Case*** - Judgment of this Court in *Radhabai Ammal -vs- N.Loganathan* reported in 2005 (5) CTC 38;



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(ii). ***Muthuraman's Case*** - Judgment of this Court in *Muthuraman*

~~-vs-~~ *Muthukumaran* reported in 2007 (5) CTC 722.

9.Per contra, Mr.C.Ramaraj, learned Counsel appearing for the Respondent / Respondent / Plaintiff submits that Order VIII Rule 9 Petition was filed when the case was posted for continuation of D.W.1's chief examination. Only with a view to delay the proceedings as far as possible, the Defendant has filed this petition. There is no merits in the Petition. The Additional Written Statement sought to be filed merely reiterates the averments made in Original Written Statement. Further, Additional Written Statement seeks to introduce a new plea which is contradictory to the earlier plea. While the Defendant had earlier agreed to deposit Rs.95,000/- with 12% interest thereon from October 4, 2015 till the date of Suit, he has introduced a new plea in the Additional Written Statement that he had paid interest till 2016 for the principal sum of Rs.95,000/-. Inconsistent pleas are permissible but not contradictory pleas. The Trial Court rightly appreciated the facts and circumstances and dismissed the Interlocutory Application. There is no warrant to interfere with it. Accordingly, he prays to dismiss this Civil Revision Petition.

10.This Court has considered both sides' submissions and perused

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the materials placed on record.

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11.The Suit was filed in the month of August 2017. The Defendant filed a Written Statement on March 05, 2018. As stated *supra*, the Defendant's case is that the Defendant borrowed a sum of Rs.95,000/- on May 30, 2007 agreeing to repay the said amount with interest at the rate of 12% per annum. At the instance of the Plaintiff's wife-Muthulakshmi, the Defendant executed the Sale Agreement dated May 30, 2007 and the General Power of Attorney dated May 30, 2007 only for the purpose of security. The Defendant never intended to sell the Suit Property and never intended to enter into a Sale Agreement for the purpose of sale. Further, he was ready and willing to pay the alleged principal amount of Rs.95,000/- along with accrued interest at the rate of 12% per annum from October 04, 2015 till the date of filing the Suit.

12.That being the Defendant's case in the Original Written Statement, in the Additional Written Statement sought to be filed by way of application under Order VIII Rule 9 of CPC, the Defendant has reiterated the same averments made in the Original Written Statement and in addition to that, he has made a plea that he paid the interest for the loan obtained from the Plaintiff's wife-Muthulakshmi till 2016. The said

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plea appears to be inconsistent with the earlier plea of the Defendant that he is ready and willing to deposit the alleged principal sum with interest from October 4, 2015. The alleged Sale Agreement is dated May 30, 2007. No reason has been assigned by the Defendant for choosing to deposit *inter alia* interest from October 4, 2015. In such a scenario, the natural presumption is that the Defendant had paid interest until before October 4, 2015 and that is the reason why he has chosen to deposit interest from that date. When so, the new plea that he had paid interest up to end of the year 2016 on the face of it appears to be inconsistent.

13.It is true that when there are inconsistent pleas, the Defendant can elect either one of them at the time of trial. But, in this case, the Interlocutory Application has been filed belatedly. The Interlocutory Application was filed only after the Plaintiff's side evidence was closed. In the facts and circumstances of this case, the Defendant cannot seek to raise a new plea inconsistent with the earlier plea at this stage. At this point, the learned Counsel for the Revision Petitioner / Defendant would rely on ***Radhabai Ammal's Case*** [cited *supra*] to contend that in appropriate cases, Order VIII Rule 9 Application can be allowed even in the appellate stage and hence, it cannot be said that the Defendant filed the Interlocutory Application belatedly. In this case, the new plea will not



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be in any manner helpful to the case of the Defendant. The earlier plea is sufficient and if the Defendant / D.W.1 intends to explain the same, he can very do so in his evidence as D.W.1. Allowing the Interlocutory Application would not yield any fruitful results but would result only in delay and may give rise to multiple proceedings, ultimately delaying the process of adjudication without any purpose. In view of the same, this Court is of the considered view that while there is no quarrel with the proposition of law advanced in *Radhabai Ammal's Case*, this is not an appropriate case for application of the said legal proposition.

14.It is settled position of law that if the parties to the Suit failed or omitted to state certain facts or certain facts came to their knowledge at a later point of time, in such circumstances, the Court can grant leave under Order VIII Rule 9 of CPC to file subsequent pleadings. In this case, the Additional Written Statement sought to be filed by the Defendant is belated and nothing but reiteration of the Original Written Statement with one new plea which is not only inconsistent, but as stated above would not be helpful to the case of the Defendant in any manner. Considering the facts and circumstances of the case, this Court is of the view that this Civil Revision Petition does not have any merits. The Trial Court after appreciating the facts and circumstances, rightly dismissed the Interlocutory Application and refused to grant leave to the Additional



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Written Statement sought to be filed. This Court does not find any irregularity or illegality in the Order passed by the Trial Court.

15. In *Muthuraman's Case* [cited *supra*] relied on by the learned Counsel for the Revision Petitioner / Defendant, a learned Single Judge of this Court had reiterated the general principles regarding Additional Written Statement and there is no quarrel with the same.

16. It is hereby clarified that the observation made by this Court, if any, on the merits of the case would solely be for the purpose of disposal of this Civil Revision Petition and the Trial Court shall decide the case untrammelled and uninfluenced by the same.

17. Accordingly, this Civil Revision Petition is dismissed. Considering the facts and circumstances of the case, there shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

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Speaking Order : Yes
Neutral Citation : Yes
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To
The Sub Court,
Perundurai.



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R. SAKTHIVEL, J.

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PRE-DELIVERY ORDER MADE IN

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