

Ambrose Vs. Neela Megam

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Court : Chennai

Decided On : Jun-27-2013

Judge : The Honourable Mr. Justice M. Venugopal

Appellant : Ambrose

Respondent : Neela Megam

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATE : 27.06.2013
CORAM THE HONOURABLE Mr.JUSTICE M.

VENUGOPAL C.R.P.(PD)No.3104 of 2010 and M.P.No.1 of 2010 1.Ambrose
2.Victor Paul ...Petitioners/Defendants/Petitioners versus Neela Megam
...Respondent/Plaintiff/Respondent Prayer: This Civil Revision Petition is filed
under Article 227 of Constitution of India as against the Order passed by the
Learned Subordinate Judge, Ariyalur, in I.A.No.33 of 2009 in O.S.No.85 of 2004,
dated 03.02.2010.

For Petitioners : Mr.S.Kamadevan For Respondent : Mr.M.V.Krishnan

ORDER

The Petitioners/Defendants have filed the present Civil Revision Petition as
against the Order dated 03.02.2010 in I.A.No.33 of 2009 in O.S.No.85 of 2004
passed by the Learned Subordinate Judge, Ariyalur, in dismissing the Application
(filed by the Petitioners/Defendants) under Order 8 Rule 9 of the Code of Civil

Procedure, praying for permission to receive the Additional Written Statement.

2.The Learned Counsel for the Petitioners/Defendants submits that the trial Court has committed an error in dismissing I.A.No.33 of 2009 in O.S.No.85 of 2004 (praying for permission of the Court to receive the Additional Written Statement) on the ground that the Petitioners are not entitled for obtaining an Order, as prayed for and further, the alleged fact pleaded in the Additional Written Statement is one which is new set of facts, cannot be allowed to be introduced in the suit, when the suit is that too in Part Heard Stage and the said reason so assigned by the trial Court is not within the four parameters of law.

3.Expatiating his submissions, the Learned Counsel for the Petitioners/Defendants submits that the ingredients of Order 8 Rule 9 of the Code of Civil Procedure enjoins the Court of Law to receive the Additional Written Statement at any stage of the pending proceedings before it and furthermore, in regard to the reception of subsequent pleadings/Additional Written Statement, a liberal/lenient view has to be taken, with a view to advance the cause of Justice.

4.It is the plea of the Petitioners/Defendants that the averments the pucca Well 70 feet depth and a septic tank about 12 feet length, are not found within the four boundaries of the suit property are not earlier made mention of in the Original Written Statement filed by the Revision Petitioners/Defendants and by introduction of these averments for which permission is sought for from the Court, if such permission is granted by the trial Court and consequently, the Petitioners/Defendants are permitted to receive the Additional Written Statement, then, no prejudice will be caused to any one much less the Respondent/Petitioner.

5.Furthermore, the aforesaid averments mentioned in the Additional Written Statement are not a new set of facts.

By permitting those facts/averments to be mentioned in the Additional Written Statement will only help the case of the Revision Petitioners/Defendants.

The Application should not have been rejected by the trial Court on the ground that the said facts will alter the character/nature of pleadings set out by the Petitioners

in the Original Written Statement.(Notwithstanding that the main suit is in Part Heard Stage after examination of DW1 and the matter is posted for further evidence of other Dws).6.Repelling the contentions of the Learned Counsel for the Petitioners/Defendants, the Learned Counsel for the Respondent/ Plaintiff submits that in the Ex.A.1 Sale Agreement, dated 11.06.2003, entered into between the respective parties in the schedule of property, there is a mention of Electricity Service Connection including a Well with one HP Motor and flush out latrine, etc., Therefore when Ex.A.1 Sale Agreement speaks for itself and when the suit is in Part Heard Stage, seeking permission of the trial Court to receive the Additional Written Statement by the Revision Petitioners/Defendants is per se not maintainable.

Furthermore, according to the Learned Counsel for the Respondent/Plaintiff, the recitals and contents of documents speak for itself and when the main suit is in Part Heard Stage, it is upto the trial Court to appreciate/evaluate the evidence tendered by the parties and to arrive at a proper conclusions/findings to be rendered in regard to the issues so framed in the suit.

7.In any event, the Learned Counsel for the Respondent/Plaintiff submits that the Order passed by the trial Court in I.A.No.33 of 2009 in O.S.No.85 of 2004 in dismissing the Application filed by the Petitioners to receive the Additional Written Statement is perfectly valid in law and it does not call for any interference in the hands of this Court.

8.It is not in dispute that the main suit O.S.No.85 of 2004 on the file of the trial Court is in Part Heard Stage.

Equally, there is no two opinion of the fact that a subsequent pleading/reception of Additional document application is to be allowed by a Court of Law, by taking a lenient and liberal view to prevent an aberration of Justice and to promote the substantial cause of Justice.

But, the said exercise of Judicial discretion by the trial Court is to be done with utmost care and circumspect fashion at least by the trial Court.

9.The application for reception of Additional Written Statement cannot be received by the trial Court either as a matter of routine or in a mechanical fashion.

A Court of Law is supposed to apply its mind and to pass a reasoned/speaking order on merits either in regard to allowing or refusing the application in the interest of Justice.

Further, when the said order is assailed before the higher Forum and if reasons are assigned, then, the higher Forum will have the benefit of looking into the validity, legality or otherwise of the Order passed by the trial Court.

10.The object of O.8 R.9 of CPC is to avoid delay and expedite trial of cases.

A Court of Law must be extremely cautious in exercising its discretionary powers under O.8 R.9 of CPC.

The grant of leave under O.8 R.9 of CPC is not mandatory.

Per contra, the same is one of discretion, in the considered opinion of this Court.

11.In the instant case on hand, even though the Petitioners/Defendants have filed I.A.No.33 of 2009 in O.S.No.85 of 2004 on the file of the trial Court, praying permission to receive the Additional Written Statement, this Court, on going through Ex.A.1 Sale Agreement contents and recitals especially in regard to the averments made in the schedule of the property, comes to an inescapable conclusion that in the Agreement itself it is expressly mentioned about the Well, HP Motor, flush out latrine and Electricity Connection in the building situated in the site more fully and subsequently described thereunder.

12.Be that as it may, when Ex.A.1 Sale Agreement, dated 11.06.2003, speaks for itself and also, when the main suit is in Part Heard Stage and after examination of DW1, the matter is posted for further examination of other Defendants, this Court holds that the trial Court has rightly dismissed I.A.No.33 of 2009.

However, this Court is not in agreement with the view taken by the trial Court that the plea mentioned in the Additional Written Statement is a new one and the same is held to be incorrect one, based on the facts of the instant case on hand.

13.In the result, the Civil Revision Petition is dismissed, leaving the parties to bear their own costs.

Consequently, the Order passed by the trial Court in I.A.No.33 of 2009 in O.S.No.85 of 2008, dated 03.02.2010, is affirmed by this Court for the reasons assigned in this Revision.

Consequently, the connected M.P.No.1 of 2010 is closed.

14.Since the suit is in Part Heard Stage, this Court is not expressing any opinion on the merits and demerits of the case.

Liberty is granted to the parties to raise all factual and legal pleas and also to argue their version of their case coupled with the oral and documentary evidence let in by the parties so far and to be let in in the near future.

Since the suit is of the year 2004, a nearly eight years have been elapsed, to meet the ends of the Justice, this Court directs the trial Court to dispose of the main suit, within a period of four months from the date of receipt of a copy of this order and to report compliance to this Court without fail (Of course, after providing due opportunities to the parties).Index :- Yes / No Internet :- Yes / No 27.06.2013 mps To 1.The Subordinate Judge, Ariyalur.

2.The Sub-Assistant Registrar (Judicial).High Court, Madras.

(To watch and report) M.

VENUGOPAL J mps C.R.P.(PD)No.3104 of 2010 and M.P.No.1 of 2010
27.06.2013

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