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Court : Chennai

Decided On : Aug-26-2016

Judge : M.V. Muralidaran

Appeal No. : CRP(PD)No. 2336 of 2012 & M.P.No. 1 of 2012

Appellant : K. Jagan and Another

Respondent : Arumugam

Judgement :

(Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, against the fair and decreetal order dated 29.08.2011 in I.A.No.522 of 2011 in O.S.No.212 of 2000, on the file of the Subordinate Court, Namakkal.)

1. To add or not to add? If to add, how much to add? If so much to add, who can add? Additional has always been considered to be positive. But sometimes, addition is considered to be unwarranted and undesirable, especially for a plaintiff opposing the defendant from filing an additional Written Statement in a civil proceeding. The long and short of the instant Civil Revision Petition just revolves around this.

2. The instant Civil Revision Petition has been filed challenging the order passed by the Subordinate Court, Namakkal in I.A.No.522 of 2011 in O.S.No.212 of 2000 dated 29.08.2011. The Revision Petitioners are Defendants 2 and 3 in the Original Suit filed by the respondents for specific performance. The first defendant in the

suit is the grandmother of the petitioner and the present respondent has filed the above suit for specific performance based on an agreement dated 10.06.1996. Since the same was not obliged, the above said Original Suit has been filed impleading the grandmother of the petitioners as a defendant and it is pertinent to point out that the parents of the petitioners have passed away on 06.09.1996 and the property is admittedly an ancestral property and the petitioners who are minors at the time of entering of the alleged agreement have sought to file additional written statement since there are some crucial aspects that ought to be pointed out before the Court. However, the Subordinate Court has dismissed the I.A. for filing the additional written statement by holding that it is an attempt on the part of the petitioners to protract the proceedings especially once when pleadings are complete and the cross examination of witnesses have begun, it would not be proper to permit the petitioners to file additional written statement more so when the same is contrary to the original written statement that has already been filed.

3. Assailing this, Mr.D.Shivakumaran, learned counsel appearing for the revision petitioners would submit that the trial Court committed an error in dismissing the application filed under Order VIII Rule 9 of C.P.C. without properly appreciating the submission of the petitioners. It has been submitted that the petitioners have raised one important point in the additional written statement sought to be filed regarding the authenticity and genuinity of the stamp paper allegedly based on which the agreement has been entered. It has been submitted that the stamp paper was purchased on 09.07.1996 but however, the suit agreement date appears to be 10.06.1996 which is a month earlier and hence, it is quite clear that the said agreement is forged and fabricated. This fact being an important fact and if the same is substantiated, it would clearly make out a case of fraud and fabrication of documents, it was completely necessary on the part of the trial Court to have been cautious while dealing with the application.

4. To canvass his case, he would rely upon the judgments of this Court in Muthuraman vs. Muthukumaran, 2007 (4) LW 924; R.S.Nagarajan vs. R.Gopalan, 2007 (2) LW 987; Shanmugam vs. Vijayarangam, 2004 (4) LW 669. Relying on the above said judgments, it has been contended the learned counsel that the Courts have to be liberal while dealing with applications for filing additional written

statements under Order VIII Rule 9 and a straight jacket approach cannot be adopted. It has also been pointed out that the additional written statement ought to have been permitted to be filed and the trial Court in denying the same, has committed a grave error.

5. Per contra, Mr.S.Kalyanaraman, learned counsel appearing for the respondent would submit that the order of the trial Court in rejecting the application for filing the additional written statement is perfectly justified since it is only an attempt made by the revision petitioners to protract the proceedings and the Suit has been filed almost a decade and a half earlier. It has also been submitted by him that the petitioners are trying to take a contrary and inconsistent plea in the additional written statement which is squarely not in tune with the original written statement and thus, prayed that the instant Civil Revision Petitioner be dismissed.

6. The scope of Order VIII Rule 9 arises to be introspected in the instant Petition and hence, Order VIII Rule 9 is extracted hereunder:

9. Subsequent pleadings:- No pleading subsequent to the written statement of a defendant other than by way of defence to set-off or counter claim shall be presented except by the leave of the Court and upon such terms as the Court thinks fit: but the Court may at any time require a written statement or additional written statement from any of the parties and fix a time of not more than thirty days for presenting the same.

7. A perusal of Order VIII Rule 9 shows that no pleading subsequent to the Written Statement of the Defendant shall be filed except by the leave of the Court and the Court is also expected to fix a time as stipulated therein. It has been held in a catena of decisions that the additional written statement should not set up a totally new case or state facts at direct variance with the original written statement so as to completely change the issue in the case. At this juncture, it is quite relevant to point out that such an embargo is not clearly contained in Order VIII Rule 9 which stands amended as per C.P.C. (Amendment) Act 2002. The legislative intent behind restriction of parties from filing subsequent pleading is to ensure that there is a logical end put to pleadings in a Civil Suit and parties are not permitted to invariably prolong the matter according to their whims and fancies by filing

unnecessary pleadings only with an intent to drag on the matter.

8. Though the general stand adopted by the Courts in matters of either amendment of pleadings or permitting for filing additional pleadings is generally liberal so as to provide parties to effectively put forth their case and also ensure that any aspects that have to necessarily be pointed out before the Court are permitted to be allowed. However, the Courts ought to be cautious in ensuring that the legislative intent behind Order VIII Rule 9 is not given a go by.

9. The petitioner cited two judgments of this Court and the same is as follows:

(i) In Muthuraman vs. Muthukumaran, 2007 (4) LW 924

... object of filing of additional written statement is to supply what might have been omitted in the written statement filed earlier and the additional written statement can be allowed, if it is not likely to cause prejudice to the plaintiff.

Court should grant permission to the defendant for filing subsequent pleadings if they are so relevant to prove the facts placed before the Court by the defendant, which cause no prejudice to the plaintiff even in the absence of any claim or set off or counter claim - In this case the averments made in the additional written statement were that he was away on the date, when the said promissory note was alleged to have been executed and did not introduce a new case other than what was pleaded earlier - By filing an additional written statement to supplement the pleadings, no prejudice would be caused to the plaintiff - Therefore, the lower Court ought not to have dismissed the petition on the ground of delay - CRP allowed.

(ii) Shanmugam vs. Vijayarangam and another, 2004 (4) LW 699

C.P.C., Order 8, Rule 9 / Additional written statement - Court ought not to go into the merits of the additional written statement at the stage of granting leave to file - In order to meed the ends of justice, the parties must be given fair and reasonable opportunity to complete the pleadings as the trial Court is the court of first instance.

Therefore, it has been stated that the object of filing additional written statement is to supply what might have been omitted in the written statement filed earlier and the additional written statement can be allowed, if it is not likely to cause prejudice to the Plaintiff. The Court has also held that permission is to be granted to file subsequent pleadings if they are also relevant to prove the facts placed before the Court by the Defendant. In the instant case, the agreement which is sought to have been allegedly entered into has been done by the parents of the petitioner who are no more. The very date on which a stamp paper was purchased itself appears to be later to the date on which the agreement is alleged to have been entered into. These facts give rise to some suspicion and hence, the Court while the petitioner has raised an issue regarding the credibility of the document should have been cautious while looking into the same. However, the Court has considered this to be another attempt by the party to prolong the matter.

10. This Court is of the view that the claim of the petitioner deserves consideration and the impugned order passed by the Subordinate Court requires interference since the stand of the petitioners has not been given the due credence at all especially once when they were minors at the time of institution of the Suit.

11. For the reasons stated above, it is just and necessary that the petitioners be permitted to file additional written statement. Hence, the order passed by the Subordinate Court, Namakkal in I.A.No.522 of 2011 in O.S.No.212 of 2000 dated 29.08.2011 is hereby set aside and the instant Civil Revision Petition is allowed and consequently, the petitioners are granted leave to file additional written statement. Since the Suit has been pending from 2000, it is hereby directed that the Suit be disposed off expeditiously within a period of three months from the date of receipt of a copy of this order.

12. Hence, the Civil Revision Petition is allowed with the above terms. No costs. Consequently, connected miscellaneous petition is closed.

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