

Murthi Gounder Vs. Karuppanna Gounder

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SooperKanoon Citation : sooperkanoon.com/814639

Court : Chennai

Decided On : Oct-01-1975

Reported in : AIR1976Mad302; (1976)1MLJ286

Appellant : Murthi Gounder

Respondent : Karuppanna Gounder

Judgement :

ORDER

C.J.R. Paul, J.

1. This revision petition is against the order of the learned District Munsif of Sankari refusing to allow an application filed by the revision petitioner-first defendant under Order 8, Rule 9 and Section 151, Civil Procedure Code, to receive the additional written statement.

2. The suit filed by the respondent was for declaration of his title to the suit property which comprises of wet lands and for a permanent injunction restraining the defendants from interfering with his possession and enjoyment of the same.

3. The suit was resisted by the defendants, of whom the fifth defendant filed a written statement which was adopted by defendants 1 to 4. In that written statement, it is categorically admitted in paragraph 3 that the suit property belongs to the plaintiff and Muthuswamy and they are in enjoyment of the same. But later,

on, it is stated that about seven, months prior to the filing of that written statement, the entire villagers of Thanamuthiyar Village in Kurumbapatty Panchayat headed by a particular M.L.A. convened a meeting at the request of the villagers and decided to put up a pucca road from Idappadi-Konganapuram Main Road passing through several patta lands including that of the plaintiff, the defendants and certain others and it was decided that the entire villagers should contribute for the formation of the road, except those pattadars in whose lands the new road has to be formed, and all the pattadars including the plaintiff agreed to that, and the new road was laid five months prior to the filing of the written statement, and it is being used by the entire villagers and the Panchayat had agreed to maintain this road.

4. Issues were then framed and the trial was commenced. It appears from the order of the learned District Munsif that after the examination of two witnesses on behalf of the defendants, the application under Order 8, Rule 9 was filed for leave to file an additional written statement.

5. By the additional written statement, it is sought to be contended that actually, the suit pathway was a customary pathway and it has been in existence for well over 100 years and it was used by the villagers as of right and without any interruption and at the beginning of 1972, the villagers of Thana Moorthipalayam applied to the Kurumbapatti Village Panchayat for the laying of a pucca road and the Panchayat passed a resolution unanimously for laying the road and for maintaining the same and since some more lands of the pattadars were required for laying the pucca road sufficiently wide enough to admit hand carts, lorries, and other vehicles, the local M.L.A. and the Panchayat President approached the plaintiff, the defendant and some other pattadards to give portions of their lands for a public purpose and they consented to do so and after obtaining their consent, the Panchayat laid the road and as such the defendants have 'acquired easement right by prescription by user of the suit cart track for well over 12 years' and the plaintiff is estopped from disputing the defendant's right to use the suit pathway and further the suit is bad for non-joinder of the Kurumbapatti Panchayat Board.

6. It may be noted that while in the original written statement, it is merely stated that the new road was laid only five months prior to the filing of the written

statement and there was no whisper of the existence of any pathway or cart track at that place, it is now sought to be made out by the additional written statement that actually there was a cart track over the plaintiff's lands and that of others which was being used by the villagers for over 12 years as an. easement and that the cart-track was widened after the plaintiff and other pattadars had given their consent to give portions of their land to the Panchayat for laying the road.

7. In the circumstances, the learned District Munsif found that by the additional written statement, the first defendant was trying to set up an entirely new case, after the examination of two witnesses on the side of the defendants. He has referred to the decision, in *Ram Eadarmal Didweim v. Govins banka alias Rameshwar Johmal* : AIR1961 Bom136 , wherein it has been observed:

In the case of an amendment of the written statement, an amendment should not be entertained if it would convert the defence into another of a different inconsistent character.

The learned District Munsif further observed that the petition was highly belated and hence he refused to permit the first defendant to file an additional written statement.

8. Undoubtedly, a defendant is entitled to file a written statement containing inconsistent pleas. This has been made clear by the decision in *Vava Rowther v. Sulaiman Rowther* : AIR1930 Mad814 But certain other considerations would have to be taken into account when a petition is filed for permission, to receive an additional written statement containing pleas, some of which are inconsistent with the pleas taken in the original written statement. As observed by Rajagopalan, J., in *Md. Ibrahim v. Ahmed Maricar* : (1948)2MLJ576 , where an apparently inconsistent plea is put forward in an additional written statement, it has to be considered whether it is expedient with reference to the circumstances of the case to permit such a plea being put forward at that stage. In that case, the suit had not come up for trial and hence, Rajagopalan, J., observed 'I am unable to see how the proposed additional plea, though inconsistent, would embarrass the trial of the suit'.

9. It is stated in the affidavit filed in support of the petition to receive the additional written statement that by inadvertence, some important pleas were omitted to be stated. It is stated by the Learned Counsel for the revision petitioner that from the Panchayat records, his client came to know that there was a cart-track in existence in the place where the present pucca road had been put up by the Panchayat. This is not a case where by mere inadvertence, certain pleas were not put forward. This is a case where nearly 2 years after having filed his written statement, the first defendant had acquired some further information and wanted to set up a case which is different from the case which he had originally set up in his written statement. Considering the stage at which such an application has been filed, undoubtedly, prejudice would be caused to the plaintiff who will now be forced to file a reply statement and as a consequence thereof, fresh and different issues will have to be framed and the trial would have to begin once over again. Taking these circumstances into consideration, I am of the view that the learned District Munsif rightly refused to permit the revision petitioner to file the additional written statement. I see no ground to interfere.

10. The petition is, therefore, dismissed.