

Jayaraman and Another Vs. Munusamy

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Court : Chennai

Decided On : Sep-21-2012

Judge : M.Venugopal

Appeal No. : C.R.P.PD.No.237 of 2010 and M.P.No.1 of 2010

Appellant : Jayaraman and Another

Respondent : Munusamy

Advocate for Pet/Ap. : For the Petitioners: K.Govi Ganesan, Advocate. For the Respondent: M.Christopher, Advocate.

Judgement :

(Prayer: Petition filed under Article 227 of the Constitution of India, as against the Fair and Decretal order dated 14.09.2009 in I.A.No.337 of 2009 in O.S.No.39 of 2003 on the file of the Learned District Munsif cum Judicial Magistrate Court, Uthiramerur.)

The Petitioners/Defendants 2 and 3 have filed the present Civil Revision Petition as against the order in I.A.No.337 of 2009 in O.S.No.39 of 2003 dated 14.09.2009 passed by the Learned District Munsif cum Judicial Magistrate, Uthiramerur.

2. The Learned District Munsif cum Judicial Magistrate, Uthiramerur, while passing orders in I.A.No.337 of 2009 (filed by the Revision Petitioners/Defendants 2 and 3), has, among other things, observed that 'the present application has been filed

only with a view to protract the pending case and further, the averments made in the application have already been made in the additional written statement filed by the Petitioners/Defendants 2 and 3 as early as on 19.08.2008. Once again very same averments have been mentioned and the present I.A.No.337 of 2009 has been filed. Further, the evidence of Plaintiff and Defendants are over and the case has been posted for hearing of the arguments. In this circumstance, the application has been filed belatedly etc.' and consequently, dismissed the application without costs.

3. The Learned Counsel for the Petitioners/Defendants 2 and 3 submits that the trial Court has not appreciated of the fact that the legal pleas like adverse possession, prescription, ouster and limitations which can be taken in the form of subsequent pleadings at any stage of the proceedings as per Order 8 Rule 9 of Civil Procedure Code.

4. Yet another submission made by the Learned Counsel for the Petitioners/Defendants 2 and 3 is that the trial Court ought to have liberally allowed the filing of additional written statement, since the Petitioners are only to project their stand point of view in the main case.

5. At this stage, the Learned Counsel for the Petitioners cites the decision in M.Thangavel Pillai V. The Commissioner, Corporation of Trichirapalli, Corporation Building, Condonment, Trichy, 2001 (1) CTC 461 wherein it is held that 'granting permission to file such additional written statement after issues were framed for trial is not illegality or irregularity order and the trial Court has been held that it does not call for interference in revision.'

6. He also refers the decision of this Court in Muthuraman V. Muthukumaran, 2007 (5) CTC 722 wherein it is held that 'additional written statement should be allowed if they are relevant to prove facts placed before the Court and the order of rejection in filing the additional written statement has been set aside.'

7. The Learned Counsel for the Petitioner quotes the following decisions:

(a) In T.R.Govindasamy and others V. T.R.Natarajan and others, 2004 (4) CTC 759 wherein it is held that 'Order 8 Rule 9 of Code of Civil Procedure gives wife power to Courts to give permission to defendant at any time for presenting written statement but fixing time limit for presenting the same.'

(b) In John C.Christian and another V. R.Adhikesavan and 11 others, 2009 (5) CTC 29, it held that 'No new plea has been raised in additional written statement and that earlier plea in the written statement also not disowned. Only to furnish better particulars and other related transactions defendant can be permitted to file an additional written statement.'

(c) In Damayanthi Kailasam V. Mrs.D.F.Philips and 3 others, 2007 (2) CTC 813, it is observed that 'inconsistent pleas can be raised by seeking amendment to written statement and the discretion exercised by the trial Court is held to be proper.'

8. Admittedly, in the present case, the evidence on the side of the Respondent/Plaintiff was over and also the evidence on the side of the 1st Defendant was closed and numerous opportunities were provided to the Petitioners/Defendants 2 and 3 to let in evidence, but they were not examined and the evidence was closed on their side and the suit was posed for hearing of arguments. Only, at the stage of hearing of the arguments, the present application has been filed to receive the additional written statement.

9. Although a liberal view can be taken by a Court of Law in regard to the filing of subsequent pleadings by a party as per Order 8 Rule 9 of Civil Procedure Code, this Court is of the considered view that such kind of liberal view cannot be taken in matters like where the evidence of witnesses were closed and that too when the matter has been posted for hearing of the arguments.

10. In the present case, the Petitioners already filed their additional written statement on 19.08.2008. Initially, they filed their written statements on 09.02.2005. Filing of subsequent pleading in the form of additional written statement cannot be permitted in instalments and that too after closure of evidence of respective parties. More so, when the main case has been posted for

hearing of the arguments and now the stage is set for hearing of the arguments and for deliverance of judgment by the trial Court. On the facts of the present case on hand, this Court is of the considered view that a subsequent pleading viz., additional written statement cannot be permitted to be filed by the Petitioners as a matter of course/routine. In fact, the ingredients of Order 8 Rule 9 of Civil Procedure Code are to be implemented by a Court of Law with great care and and circumspection.

11. Viewed in that perspective and taking note of the fact that the Petitioners/Defendants 2 and 3 have been already provided with an opportunity of filing the additional written statement as early as on 14.7.2008 and also bearing in mind another vital fact that the suit is set for hearing of arguments, this Court comes to an inescapable conclusion that the present I.A.No.337 of 2009 filed by the Petitioners/ Defendants 2 and 3 is only an exercise in futility. In short, this Court finds no error/infirmary in the order passed by the trial Court in rejecting the I.A.No.337 of 2009 praying permission of the Court to file additional written statement. Consequently, the Civil Revision Petition fails.

12. In the result, the Civil Revision Petition is dismissed, leaving the parties to bear their own costs. The order passed by the trial Court in I.A.No.337 of 2009 in O.S.No.39 of 2003 dated 14.09.2009 is affirmed by this Court. Consequently, connected Miscellaneous Petition is closed.

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