

(2002) 12 MAD CK 0008

In the Madras High Court

Case No : C.R.P (P.D.) No.1734 of 2002 and C.M.P. No. 14721 of 2002 & C.R.P. (P.D.) No. 1734 of 2002 and C.M.P. No. 14721 of 2002

C. Thirumoorthy and T. Vijaya

APPELLANT

Vs

Kanakachalam and Periyasamy

RESPONDENT

Date of Decision : 13-12-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (2002) 12 MAD CK 0008

Hon'ble Judges : M. Chockalingam, J

Bench : Single Bench

Advocate : N. Manokaran, for the Appellant; M.M. Sundaresh, for the Respondent

Judgement

M. Chockalingam, J.—The order of the learned District Munsif, Erode, dismissing an application seeking permission to file an Additional written statement is under challenge.

2. It was a suit filed by the respondents/plaintiffs seeking declaration of their exclusive right in the suit property namely the cart track mentioned as

A-B"" in the plaintiff's land. The suit was contested by the defendants flatly denying the claim of the plaintiffs stating that the plaintiffs have no right

in the ""A-B"" cart track. Necessary issues were framed. P.W.1 has been examined in chief. At that juncture, the defendants filed the instant

application seeking permission of the Court to file the Additional Written Statement. The plaintiffs strongly opposed the same. Agreeing with the

contention put forth by the plaintiffs' side, the Court below, dismissed the application.

3. It is contended by the learned counsel for the revision petitioners that it was a

common pathway. The said fact was not averred in the written statement originally but the claim of the plaintiffs has been objected stating that the claim was false and they have no right at all and making such an amendment, the plaintiffs are in no way be prejudiced. Hence, an opportunity should be given to permit the defendants to file the Additional Written Statement.

4. Countering to the above contention, learned counsel for the respondents would urge that the lower court order has got to be sustained, since the matter was pending for a long time and the defendants have brought forth the instant application only after the examination of the P.W.1-in-chief and at that juncture allowing such an application would cause prejudice to the case of the plaintiffs.

5. After hearing both sides, the Court is of the view that the order of the lower Court has got to be necessarily set aside. It was a suit filed by the respondents/plaintiffs seeking exclusive right over the suit cart track. A perusal of the written statement would clearly reveal that there was thorough denial of the plaintiffs right and the suit cart track. It is true that the defendants have not stated that it was a common cart track enjoyed by all the parties. It is also true that P.W.1 has been examined-in-chief. Allowing the defendants to plead as found in the additional written statement stating that it is a common cart track will not in any way cause prejudice to the interest of the plaintiffs as put forth in the original plaint.

6. Under these circumstances, the Court is of the view that permission has got to be granted to the defendants to file the Additional Written Statement only to putforth such a plea as stated therein. Therefore, the order passed in I.A. No. 1096 of 2001 in O.S. No. 592 of 2000 is set aside. The civil revision petition is allowed. No costs.

7. Since, the instant application has been filed at the time when P.W.1 was examined in chief, it should be compensated by way of awarding a cost of Rs. 1,500/-. Therefore, the revision petitioners/ defendants are directed to pay Rs. 1,500/- to the counsel for the respondents herein within a period of four weeks here from ,in default, the civil revision petition will stand dismissed and the order of lower Court will have its force.

8. On fulfilment of the above condition, the lower Court is directed to receive the additional written statement, frame necessary issues and dispose

of the matter within a period of three months therefrom.

9. Consequently, C.M.P. 14721/2002 is closed.