
(2009) 02 MAD CK 0177

In the Madras High Court

Case No : C.R.P. (PD) No. 3711 of 2007 and M.P. No. 1 of 2007

Chinnasamy Gounder, Selaindra Ammal, Loganathan and
Senthilnathan

APPELLANT

Vs

Balasubramaniyam Gounder

RESPONDENT

Date of Decision : 11-02-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 8 Rule 9

Citation : (2009) 02 MAD CK 0177

Hon'ble Judges : G. Rajasuria, J

Bench : Single Bench

Advocate : S. Dhanasekaran, for the Appellant; No appearance, for the Respondent

Final Decision : Dismissed

Judgement

G. Rajasuria, J.—Heard the learned Counsel for the petitioners. Despite time having been given, no one represented on the side of the respondent.

2. The gist and kernel of the relevant facts, which are absolutely necessary and germane for the disposal of this civil revision petition would run thus:

The plaintiff/respondent herein filed the suit in O.S. No. 249 of 2006 seeking declaration, permanent injunction and mandatory injunction in relation to the suit scheduled properties. The defendants entered appearance and filed their written statement. Whereupon issues were framed; trial commenced and PW1 was examined in chief. While so, the defendants filed I.A. No. 1291 of 2007 seeking permission of the Court to file additional written statement under Order 8 Rule 9 of CPC enclosing the additional written statement. However, after hearing both sides, the lower Court dismissed the same. Being aggrieved by and dissatisfied with the said order, this civil revision petition has been focussed on various grounds.

3. The learned Counsel for the revision petitioners placing reliance on the

grounds of revision would develop his argument to the effect that the earlier written statement was filed in a hurry because the first defendant was suffering from Chickenkunya and his son alone instructed the Advocate to file the written statement without details; as such, the earlier written statement contains only denial clauses; however before cross-examining PW1, the defendants realised that more details should be furnished relating to their case and in accordance with that, they enclosed the additional written statement along with the I.A and sought permission to file the same before the Court; there is no virtually antithetical stand; in the earlier written statement there was denial of the averments in the plaint including the partition deed emerged; however, in the additional written statement, it is clarified that as per the said partition deed some portions are in the enjoyment of the defendants and this is by way of further clarification and even if it is taken as contradiction, such a stand is not prohibited under law. By way of buttressing and fortifying, strengthening and fattening his submissions, the learned Counsel cited the following decisions:

(i) Muthuraman Vs. Muthukumaran,

(ii) 2006 STPL (LE) 36970 SC (Baldev Singh and Ors. v. Manohar Singh and Anr.)

4. A bare perusal of the aforesaid judgment would exemplify and indicate that the defendants should be given liberty to take pleas in commensurate with their case and even though certain pleas might be antithetical to each other, nevertheless, they are at liberty to take the same. Here, I am of the view that earlier while filing the written statement, they simply denied the averments/allegations in the plaint and subsequently, they wanted to furnish details. While furnishing details, they were constrained to aver and highlight about the emergence of the partition deed and also about their enjoyment of the certain items of properties under the said partition deed.

5. In my considered opinion, by allowing the additional written statement, the Court is not going to pass a decree based on the additional written statement. It all depends upon the evidence to be adduced on either side. As such, the lower court could have very well allowed the additional written statement to be filed and that too, when the matter was at the earliest stage of trial , so to say, before the commencement of cross examination.

6. Hence, in these circumstances, the order of the lower Court in I.A. No. 1291 of 2007 is set aside and the civil revision petition is allowed. However, I would like to make it clear that it is open to the plaintiff to file reply statement, if he chooses to do so. No costs. Consequently, the connected miscellaneous petition is closed.