

(2009) 01 MAD CK 0131

In the Madras High Court

Case No : C.R.P. (PD) No. 1832 of 2005 and C.M.P. No. 20473 of 2005

Duraisamy Pillai

APPELLANT

Vs

Periannan Pillai and Palaniyandi Pillai

RESPONDENT

Date of Decision : 20-01-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 8 Rule 9, 151

Citation : (2009) 01 MAD CK 0131

Hon'ble Judges : M. Venugopal, J

Bench : Single Bench

Advocate : G. Susheela, for the Appellant; R. Subramanian, for the Respondent

Final Decision : Dismissed

Judgement

M. Venugopal, J.—The Revision petitioner/12th defendant has projected the civil revision petition as against the order in I.A. No. 1641 of

2005 in O.S. No. 278 of 2003 passed by the Additional District Munsif, Namakkal in dismissing the application filed by the petitioner under

Order 8 Rule 9 and Section 151 of Civil Procedure Code.

2. The trial Court while passing order in I.A. No. 1641 of 2005 has inter alia held that ""other defendants have mentioned the details projected by

the revision petitioner in their additional written statement and as such the plea of the revision petitioner in regard to the filing of his additional

written statement cannot be accepted and further that the documents have been filed and that the witnesses have been examined and resultantly

dismissed the application.

3. The learned Counsel for the revision petitioner/12th Defendant urges before this Court that the order of the trial Court in dismissing the I.A. No.

1641 of 2005 is without jurisdiction and contrary to law and that the trial court has not appreciated the fact that the revision petitioner/12th

Defendant has adopted the written statement filed by D1 and D11 and further the D1 and D11 have also filed the additional written statement

raising additional contentions and in fact, only the same contentions are raised by the revision petitioner/12th Defendant in the additional written

statement of D1 and D11 and therefore, the trial Court ought to have allowed the I.A. No. 1641 of 2005 and moreover, the trial Court has

committed an error in not appreciating the fact that the additional written statement filed by the revision petitioner will not involve raising of new

issues requiring any additional evidence and the rule of pleading is that an issue cannot be raised by a party without a plea in that regard and this

crucial aspect of the matter has not been looked into by the trial court in proper perspective and by allowing the I.A. No. 1641 of 2005 no

prejudice would be caused to the plaintiffs and therefore prays for allowing the civil revision petition to prevent the aberration of justice.

4. In support of the contention that the revision petitioner must be given an opportunity to raise legal questions, the learned Counsel for the revision

petitioner/12th Defendant cites a decision in Subramanian and three others Vs. Jayaraman, , wherein this Court has inter alia held that

only if the defendants introduce entirely different case in additional written statement so as to prejudice the other side, their application liable to be

rejected and therefore it is not reasonable to deny the petitioner opportunity to resort to raise legal questions, etc.,

He also brings to the notice of this Court the another decision in M. Thangavel Pillai Vs. The Commissioner Corporation of Trichirapalli,

Corporation Building, Condonment, Trichy, , wherein this Court has observed that

In the case on hand, the respondent only attempted to reinforce what has been stated in the original written statement by furnishing the details about

the suit schedule property which, unfortunately the petitioner has omitted to mention in his plaint which he ought to have done. In such

circumstances, it cannot be held that the respondent was attempting to plead a different case than what has been pleaded in the original written

statement. In those circumstances, the action of the Court below in permitting the respondent to file the additional written statement cannot be

found fault with.

5. Contending contra, the learned Counsel for the respondents submit that almost all the other defendants have adopted the written statement of

D1 and D11 and that the additional written statement of D1 and D11 have been accepted by the trial Court and the averment of the revision

petitioner/12th Defendant in his additional written statement to the effect that the channel in entirety on the lower side in survey number runs in his

land has already been made mention of in the additional written statement of D1 and D11 in a way that the respective survey numbers do belong to

the respective owners in their own right and therefore, the trial court is perfectly correct in dismissing the I.A. No. 1641 of 2005 filed by the

revision petitioner/12th Defendant and this court sitting in revision at this stage need not interfere with the order passed by the trial Court.

6. Countering the contention of the respondents/Plaintiffs, the learned Counsel for the revision petitioner submits that when the other defendants

namely D1 and D11 have filed their additional written statement and the same have been accepted by the trial Court, then the additional written

statement of the revision petitioner is only trying to explain the same stand taken by the other defendants emphasizing the same in a different way

and therefore, by allowing the application no prejudice or hardship will be caused to the respondents/Plaintiffs herein.

7. A perusal of the additional written statement of the revision petitioner/12th Defendant do clearly indicate that a plea is also taken that the land

owners where the channel runs are also necessary parties and therefore, the suit is liable to be dismissed for non-joinder of necessary parties.

Further, the revision petitioner has also taken a plea that O.S. No. 1225 of 2004 has been filed for permanent injunction which has been decreed

and as against the said judgment and decree, an appeal has been preferred and therefore on the basis of the said Judgment and decree, the

Plaintiffs are not entitled for any relief inasmuch as the present suit has been filed praying for the relief of declaration.

8. It is an axiomatic fact that an additional written statement must not set up totally a new case or state of facts varying with the original written

statement filed so as to comprehensively or completely changed the issues involved in the case. As a matter of fact, the second part of Order 8

Rule 9 enjoins that the Court of law at any time may require a written statement or an additional written statement. It must be borne in mind the

second part of the rule does not confer any right on a party to file a written statement or an additional written statement. However, they can do so

only on being ""required by the Court"".

9. As far as the present case is concerned, the revision petitioner/12th Defendant has to let in evidence on his side before the trial Court in the

conduct of the trial of the main case. The revision petitioner/12th Defendant has to enter into the box and put forward his case.

10. On a careful consideration of the respective contentions, this Court is of the considered view that the revision petitioner/12th Defendant cannot

be permitted to file his additional written statement as a redundant one considering the over all assessment of the attendant facts and cumulative

circumstances of the case and in that view of the matter, the civil revision petition fails and the same is hereby dismissed in the interest of justice.

11. In the result, the civil revision petition is dismissed. The order passed by the trial Court in I.A. No. 1641 of 2005 is affirmed by this Court for

the reasons assigned in this revision. However, liberty is given to the revision petitioner/12th Defendant to produce the best evidence on his side

and in this regard, the trial Court shall permit the revision petitioner in the manner known to law. Since this Court is informed that the matter is

pending in part heard stage before the trial Court from 17.10.2005, this Court in the interest of justice directs the trial Court to dispose of the main

case O.S. No. 278 of 2003 within a period of four months from the date of receipt of a copy of this order. The parties are directed to lend their

cooperation to the trial Court in regard to the completion of the proceedings. The trial Court is directed to submit a report of compliance in regard

to the disposal of the case within the timeframe fixed by this Court.

12. In the result, the civil revision petition is dismissed leaving the parties to bear their own costs. The connected miscellaneous petition is closed.