

(1990) 08 MAD CK 0012
In the Madras High Court
Case No : C.R.P. No's. 2006 and 2007 of 1990

K. Rajendran

APPELLANT

Vs

K. Selvaganapathy and 3 others

RESPONDENT

Date of Decision : 07-08-1990

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (1990) 08 MAD CK 0012

Hon'ble Judges : Srinivasan, J

Bench : Single Bench

Advocate : K. Mohanram, for the Appellant; M. Kandasamy, for the Respondent

Final Decision : Dismissed

Judgement

Srinivasan, J.—These two revisions are directed against the orders of the Principal Subordinate Judge, Coimbatore, permitting the filing of

additional written statements by defendants 2 and 3 in the suit. The suit is filed by the second respondent herein for partition and separate

possession. Originally, a written statement was filed by the first defendant, who is the petitioner in these revision petitions, and adopted by

defendants 2 and 3. Now, defendants 2 and 3 filed additional written statements. The application to file additional written statements was opposed

by the plaintiff. But the court below overruled the objections raised by the plaintiff and permitted the filing of the additional written statements.

2. The first defendant has filed these revision petitions contending that he was not impleaded as a party to the applications filed by defendants 2

and 3 for permission to file additional written statements. It is also his contention that in the additional written statements, pleas have been raised by

defendants 2 and 3 which run directly counter to the plea raised in the original

written statement filed by the first defendant which was adopted by defendants 2 and 3. It is therefore, argued that the court ought not to have permitted the filing of additional written statements which contain inconsistent pleas. It is also pointed out that the trial has already commenced and the plaintiff has examined himself and the first defendant is now in the witness box. According to learned counsel at that stage no defendant can be permitted to file any additional plea raising inconsistent defence.

3. Learned counsel places reliance on the judgment of Mohan, J., in *The National Small Industries Corporation by its Regional Manager and*

Principal Officer v. M/s. Ground Engineer and Comp any, by its sole Proprietor P. Madhusudhanan 1975 T.N.L.J. 6. That was a case which

arose on the original side in which an application was filed for leave to file additional written statement after the plaintiff had examined himself as

P.W.1 and marking certain documents on his side The learned judge found that the plea that was sought to be raised in the additional written

statement was inconsistent with the plea raised in the original written statement and the plaintiff would be seriously prejudiced by allowing the

additional written statement to be filed at that stage. Consequently, he dismissed the application A similar judgment was rendered by Paul, J.) in

Murthi Gounder Vs. Karuppanna Gounder, . on which also reliance is placed by learned counsel for the petitioner. In that case, the district munsif

dismissed the application filed by the defendant for leave to file additional written statement raising a new case. The learned judge held that

permitting the additional written statement, in the circumstances of the case, would cause considerable prejudice to the plaintiff and it should not be

allowed. Consequently, he dismissed the revision petition.

4. The principle laid down in the above cases will not apply to the facts of the present case as this is not a fight between the first defendant on the

one hand and the plaintiff on the other. Here, the defendants 2 and 3, who had originally adopted the written statement of the first defendant, have

now filed additional statements raising certain additional pleas. According to the first defendant, they are inconsistent with the plea raised in the

written statement filed by him already and adopted by defendants 2 and 3 and, therefore, that should not be allowed. Prejudice, which is said to be

caused, is only to the first defendant and not to the plaintiff. The first defendant

is still in the witness box and he has got lot of opportunities to let in sufficient evidence to prove that the plea raised in the original statement is correct and the plea raised in the additional written statements by defendants 2 and 3 should not be accepted by the court.

5. Further, after the amendment to the CPC in 1976, the proviso to S.115, C.P.C. is to the effect that if an order is made in the course of a suit or other proceeding this court shall not vary or reverse the same unless the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceeding or the order if allowed to stand, would occasion a failure of justice or cause irreparable injury to the party against whom it is made. In this case, the order, if it had been in favour of the petitioner herein, would not have put an end to the suit. Hence, Cl.(a) of the proviso will not apply. As regards the other proviso, there is no question of irreparable injury to the petitioner herein or failure of justice. The petitioner has still sufficient opportunities in the suit to let in evidence to prove his case and to prove that the case of defendants 2 and 3 is false and that the court below should not accept the same. In the circumstances, I am of the view that there is no case, for interference at this stage under S.115, C.P.C. Hence this civil revision petition is dismissed. No costs.