

(2003) 06 MAD CK 0046

In the Madras High Court

Case No : Civil Revision Petition (PD) No's. 894 and 895 of 2003 and C.M.P. No. 5963 of 2003

P. Ganeshammal, A.P. Velusamy, E. Rukmani, V. Gomathi and P. Manigandan APPELLANT

Vs

M. Jeganathan, S. Duraisamy, A. Selvaraj, V. Thangavel and M. Yogabalakrishnan RESPONDENT

Date of Decision : 27-06-2003

Acts Referred:

Citation : (2003) 2 MLJ 839

Hon'ble Judges : M. Karpagavinayagam, J

Bench : Single Bench

Advocate : N. Manokaran, for the Appellant;

Final Decision : Dismissed

Judgement

M. Karpagavinayagam, J.—Seeking to set aside the orders impugned passed in the applications filed by the defendants/petitioners

requesting for amendment and permission to file additional written statement, these two civil revision petitions have been filed.

2. The respondents filed a suit against the petitioners for the relief of specific performance. According to the plaintiffs, the second petitioner entered

into a sale agreement with the respondents and agreed to execute the sale deed within a period of one year from 19.8.1993 and on 28.5.1994, the

second petitioner had received a sum of Rs.25,000/- and made an endorsement on the backside of the agreement and despite the notice dated

24.8.1995, the petitioners/defendants have not executed the sale deed. Hence, the suit has been filed in the year 1997. The written statement has

been filed by the petitioners stating that the sale agreement is true, but the

plaintiffs have not shown their readiness and willingness to get the sale deed executed and therefore, the suit is liable to be dismissed. After framing of the issues, the suit was taken up in the list for trial. At that stage, the petitioners filed two applications in I.A.No.190 of 2002 and I.A.No.191 of 2002 to receive additional written statement and to amend the written statement already filed stating that the endorsement made by the second petitioner on 28.5.1994 was a forged one. Since these applications have been objected to by the petitioners/respondents, the trial Court dismissed the same. Hence, these revision petitions.

3. According to the counsel for the petitioners, in the 4th paragraph of the first written statement filed on behalf of the defendants, they have

wrongly stated that the averment contained in the plaint that the second defendant received a sum of Rs.25,000/- and endorsed the receipt in the

agreement is admitted as true and correct and the word "not" before the word "admitted" had been by mistake omitted to be typed and as such,

the additional written statement ought to have been entertained and opportunity must have been given to the petitioners/defendants to show that the

endorsement dated 28.5.1994 was forged and as such, the suit is barred by limitation. The counsel would also cite the decisions in M/s. Estralla

Rubber Vs. Dass Estate (Pvt.) Ltd., and SAMPATH KUMAR v. AYYAKANNU 2002(4) CTC 189 to show that the amendment petition can

be filed at any time and mere delay cannot be a ground to reject the petition for amendment.

4. I have considered the arguments advanced by the counsel for the petitioners and also gone through the impugned common order.

5. It is clear, on perusal of the written statement which has been filed as early as on 20.8.1998, that in paragraph 4, the defendants admitted that

they received Rs.25,000/- and made endorsement. The wordings contained in paragraph 4 are as follows:

The averments contained in para 4 of the affidavit that the 2nd defendant had received another sum of Rs.25,000/- and had endorsed the receipt

in the agreement is admitted as true and correct.

6. After the suit was taken up for trial, that too, after the examination of the witnesses on the side of the plaintiffs was over, the petitioners have

made an attempt by filing these two applications to introduce a new defence,

which is contrary to the admitted facts in the earlier written statement.

7. It is true that the amendment of pleadings can be allowed if such an amendment is required for proper and effective adjudication of controversy

between the parties. But, the question relating to time barred claim cannot be allowed to be raised by proposing an amendment to take away the

valuable accrued right of the plaintiff.

8. From the records, it is quite evident that a new defence is sought to be introduced by stating that the endorsement is forged and as such, the suit

is liable to be dismissed as barred by limitation. If this is allowed, it is apparent that a serious prejudice would be caused to the plaintiffs so as to

take away their accrued right.

9. Further, as noted above, the defendants chose to ask for the amendment only during the pendency of trial, that too after the examination of the

witnesses on the side of the plaintiffs was over. There is no bona fide in the claim made by the petitioners. Therefore, the civil revision petitions are

dismissed. Consequently, C.M.P.No.5963 of 2003 is also dismissed.