

IN THE COURT OF THE DISTRICT MUNSIF AT MADURANTAKAM

PRESENT: Tmt. V.Devapriya, B.Sc., M.L.,

District Munsif, Madurantakam

Monday, the 24th day of June, 2024

I.A.No.7/2023

in

O.S.No.33/2022

1. Murali

2. Logu @ Loganathan

...Petitioners/Defendants 2 and 3

-vs-

1. K. Chandran

...1st Respondent/Plaintiff

2. Vijayalakshmi

...2nd Respondent/1st Defendant

This petition coming up before me on 12.06.2024 for final hearing in the presence of, Thiruvalargal. M.Tamilmaran, V.Selvakumar, N.Sakthimurugan and G.Elumalai, counsels for Petitioners/Defendants 2 and 3 and Thiruvalargal. G.Pachaiyappan and N.Ganapathi, counsels for the 1st Respondent/Plaintiff and the 2nd Respondent/1st Defendant having been set exparte in the main suit and after hearing the arguments on both sides and upon perusing the materials placed on record, and having stood over for consideration till this day, this court delivers the following,

ORDER

This petition has been filed by the Petitioners/Defendants 2 and 3 under

Order VIII Rule 9 of Code of Civil Procedure, to receive the additional written statement in the above suit.

2.The averments stated in the petition in brief

The Petitioners/Defendants 2 and 3 had already filed written statement in the above suit. The Petitioners/Defendants 2 and 3 had omitted to raise counter claim to declare the 1st Respondent/Plaintiff's sale deed dated 28.03.2008, as null and void. Therefore it is necessary to file additional written statement along with counter claim. Hence the petition.

3. The averments stated in the Counter filed by the 1st Respondent/Plaintiff in brief:

This petition is not maintainable in law and on facts. The averments in the affidavit and the additional written statement are false. The Petitioners/Defendants 2 and 3 had not stated any reasons to file the additional written statement. The above suit is post for cross examination of PW1 and at this stage, this petition is not maintainable. This Petitioner/Defendants 2 and 3 has no right to file counter claim. This petition is filed to drag on the proceeding. There is no merits in the petition. Hence this petition is liable to be dismissed with costs.

4. The point for determination is whether this petition is to be allowed or not?

5. No exhibits were marked and no witnesses were examined on both sides.

6. Heard both sides and perused the records.

7. The Petitioners/Defendants 2 and 3 had filed this petition to receive the additional written statement along with counter claim. The 1st Respondent/Plaintiff resisted the petition stating that the Petitioners/Defendants 2 and 3 had not stated the reason for filing additional written statement and that the allegations in the additional written statement are false.

8. The 1st Respondent/Plaintiff had filed the above suit for permanent injunction based on his sale deed dated 28.03.2008. The Petitioners/Defendants 2 and 3 had filed written statement claiming title over the suit properties and had pleaded that the 1st Respondent/Plaintiff's sale deed dated 23.08.2008 is not valid in law. However, the Petitioners/Defendants 2 and 3 had not claimed any counter claim in the earlier written statement. The defence taken in the additional written statement was already taken in the earlier written statement and the only reason for filing the additional written statement is to seek for counter claim to declare the 1st Respondent/Plaintiff's sale deed dated 28.03.2008, as null and void.

9. The Petitioners/Defendants 2 and 3 had relied upon the Judgement of the Hon'ble High Court of Madras in the case of *P.Ramasami and others Vs. Nagai Sivasakthi Benefit Fund limited, represented by its Managing Director, R.K.Ravi* [2016 (2) CTC 167], wherein it was held that the Order VIII Rule 9 of Code of

Civil Procedure provides ample power to the court of law to grant leave to file additional written statement and that if counter claim has been raised, the additional court fee has to be paid. In the another judgment relied upon by the Petitioners/Defendants 2 and 3, the Hon'ble High Court of Madras in the case of *N.Vijayalakshmi Vs. Janakiyammal and others* [2017 (1) CTC 315], had held that the grant of any discretionary relief will depend upon the factual background involved in each case.

10. In the present case the Petitioners/Defendants 2 and 3 had not raised any new pleas inconsistent to the pleas in the earlier written statement. But they had sought to file the additional written statement to raise counter claim. The above suit is in the stage of cross examination of PW1 and the same was not yet commenced. Therefore no prejudice will be caused to the 1st Respondent/Plaintiff. Hence, for the foregoing reasons and to avoid multiplicity of proceedings, this court is inclined to allow this petition on costs.

11. In the result, this petition is allowed on cost of Rs.500/- to be paid by the Petitioners/Defendants 2 and 3 to the 1st Respondent/Plaintiff, on or before 01.07.2024, failing which, this petition will be automatically dismissed. Call on 01.07.2024.

Dictated to the Stenographer, transcribed and typed by him and corrected and

pronounced by me in open court on this the 24th day of June, 2024

District Munsif
Madurantakam

Petitioners side witnesses and documents:

Nil

Respondents side witnesses and documents:

Nil

District Munsif
Madurantakam