

IN THE COURT OF DISTRICT MUNSIF, VADIPATTI, MADURAI DT.

Present: Thiru.D. Ramganes M.A.,B.L.,  
District Munsif.

**Date: 18.06.2019**

...

I.A.No. 18/2015

in

O.S.No.174/2009

1. S. Sadayandi

2. Velan : Petitioner/Defendants 1 & 4

//Versus//

S. Pitchai : Respondent/Plaintiff

This petition is filed before this court and it was taken on 08.01.2015 and Advocate Thiru. M. Raja Saravanan appeared for the Petitioners/Defendants 1&4 and Thiru. N.C.R Janagar appeared for the Respondent/Plaintiff. This petition came before me for final hearing on 10.06.2019, upon perusing the available material records and having stood over for consideration till this day, today this court delivered the following...

### **ORDER**

The petitioners had filed this petition U/S Order VIII, Rule 9 and Section 151 of CPC to receive the additional written statement.

#### **1) The Gist of Petition is follows:**

The petitioners are the 1 & 4 Defendants in the above main suit. At the time of preparation of written statement due to hurry some important details were omitted to be mentioned. The petitioners/defendants are illiterates and new to litigation. So some vital defenses were omitted in discussion to advocate. The elders in their village advised them to avoid court proceeding. The respondent also interest to give up the suit. So the

petitioners not met and discuss the case in detail to petitioner's advocate on the impression that the respondent/plaintiff would withdraw the suit. The omission to mention the details and delay in filing this application to above bonafide reasons. That the earlier application to receive the written statement was dismissed for default. Therefore it is just and necessary and receive the additional written statement filed by the petitioners. Hence this petition is filed.

## **2. COUNTER OF RESPONDENT/PLAINTIFF**

The original suit filed by the Respondent/Plaintiff against the Petitioners 1 to 5 in respect of joint family properties and that the suit mentioner properties are ancestral properties to the Respondent/Plaintiff and all other Petitioners/Defendants including the 1<sup>st</sup> and 4<sup>th</sup> Petitioners/Defendants in respect of this Partition suit. The 1<sup>st</sup> petitioner/Defendant is a father of plaintiff and all other Defendants, they were living as a joint family members upto 2008 they are enjoying the suit properties, and the 1<sup>st</sup> Petitioner/1st Defendant executed a settlement deed in the name of his grandson Minor.Ranjithkumar in suit properties on 03.10.2008 and another settlement deed executed on 17.10.2008 in two different dates without informed to the Respondent/Plaintiff and without getting consent in respect of joint family properties from the Respondent/plaintiff, and that the said suit properties are not self acquired properties of 1<sup>st</sup> petitioner/Defendant, while so being the 1<sup>st</sup> petitioner/Defendant S. Sadaiyandi due to inducement of 4<sup>th</sup> Petitioner/Defendant namely Velan executed two settlement deeds in the name of 4<sup>th</sup> Petitioner/Defendants son Minor.Ranjithkumar and only son to the 4<sup>th</sup> Petitioner/Defendant namely velan but the 4<sup>th</sup> Petitioner/Defendant revealed some false versions in Para vise of Additional written Statement filed by the petitioner/4<sup>th</sup> defendent revealed that the Minor Ranjithkumar not

impleded as necessary party in the partition suit. But the allegations is not sustainable by Respondent/Plaintiff as per law, because the Minor Ranjithkumar is not a share holder to the joint family properties while his father namely Velan is living as a share holder of family property. So the Minor Ranjithkumar is not a necessary party as per law to this partition suit to implement him as party in respect of Partition suit. The 4<sup>th</sup> Petitioner /Defendant in his additional written statement in Para 3, the father of the 1<sup>st</sup> Defendant died on 3<sup>rd</sup> day of Avani (Tamil month) in the year 1986. So that the suit properties left by the father of the defendant are self acquired property to the Defendant, the settlement deed executed by the 1<sup>st</sup> defendant it has been as ancestral, as they are only self acquisition, the reference as an ancestral property is only mistake that was due to misguidance of document writer. The value of the suit properties as on the date suit itself would be not less than Rs. 7,00,000/- (Rupees Seven Lakhs only) but the Respondent/Plaintiff has valued the suit only at Rs. 1,12,500/- because the respondent/plaintiff valued the suit property as per settlement deed on guideline value of Alanganallur Sub Registrar Office. On that basis the Respondent/Plaintiff paid court fee under section 37(2) of the Tamilnadu Court fee Act for the partition suit. This court is having right to deal with the Partition suit at Rs. 1,00,000/-. So this Partition suit filed by Respondent/Plaintiff paid correct court fee of Rs. 250/- valued at Rs. 1,12,500 for his 1/6th share only.

The petitioner/Defendant already filed additional written statement along with affidavit on 18.03.2014 which is numbered in I.A. No. 126/2014 and the case was posted for cross examination in so many hearings after filed counter affidavit by the Respondent/Plaintiff. But the petitioners/Defendants were not appeared for cross examination in those hearings. This court pronounced order in I.A. No. 162/2010 in

O.S.No. 174/2009 on 11.09.2014 for cross examination so finally. The petitioner/Defendants and their counsel are not appeared before this court for cross examination on that hearing. This court passed order in that case as 'set exparte' due to non-appearance of Petitioners/Defendants for argument. Finally in I.A No. 126/2014 dated 11.09.2014 and then the above named 4<sup>th</sup> Petitioner/Defendant filed an application again to set aside the exparte order on 11.09.2014 which is numbered in I.A.No. 429/2014 but the above named 4<sup>th</sup> Petitioner/Defendant and his counsel were not appeared in that I.A No. 429/2014 on 18.12.2014 for enquiry. So, the above mentioned application is dismissed on 18.12.2014. The 4<sup>th</sup> petitioner/Defendant again filed on another application on 8.01.2015 to set aside the exparte order in that I. A. No. 379/2015 in that petition also the above named Petitioner and his counsel also were not appeared for enquiry on 08.01.2015 which is dismissed on 09.04.2015, and 4<sup>th</sup> Petitioner/Defendant again filed another application on 06.10.2015 to set aside the exparte order mentioned on 09.04.2015 that Petition is numbered in I.A No. 379/2015 in O.S No. 174/2009. Which set aside petition is dismissed by this court due to non-appearance of hearing by 4<sup>th</sup> Petitioner/Defendant at the time of hearing dated 09.10.2015.

But the petitioner/Defendant again filed an additional written Statement along with affidavit on 08.01.2015 so freshly inlieu of filing revision petition before this High court, Madras at Madurai Bench against the order in I.A No. 126/2014 dated 11.09.2014 but this additional written statement along with affidavit is not acceptable as per law filed by petitioners/Defendants before this court in I.A. No. 18/2015 on 08.01.2015. Hence the petition liable to be dismissed.

Hence dismiss the petition for restore the suit filed by petitioner/4<sup>th</sup> defendant in

I.A .No.s 379/2015, in I.A No. 191/2015, I.A No. 18/2015 in O.S No. 174/2009 pronounced order to remand for enquiry to the trial court with exemplary cost.

3) Now the points for consideration is whether this petition has to be allowed or not?

4) Heard both side. Perused records. This petition has been filed by the petitioner / 4<sup>th</sup> defendants for receive the additional written statement filed by them. But on perusal of records, the 1<sup>st</sup> defendant already filed written statement on 11.11.2010 and 4<sup>th</sup> defendant was also filed written statement separately on 17.06.2010. Further the defendants 2,3 and 5 were adopt the written statement of D1. On perusal of written statement filed by them there is vast difference existing regarding the nature of the suit property belongs to the 1<sup>st</sup> defendant. The 1<sup>st</sup> defendant stated in his written statement that,

*"It is true that the schedule mentioned properties are originally owned and possessed by the 1<sup>st</sup> defendants father one Mr. Subban. After the lifetime of Mr. Subban the 1<sup>st</sup> defendant and his brother one Mr. Chinnathambi divided the properties where by the schedule mentioned properties were allotted to the share of the 1<sup>st</sup> defendant."* But the averments of the written statement filed by the 4<sup>th</sup> defendant clearly shows as that the suit properties were owned by the 1<sup>st</sup> defendant through oral partition as well as natham patta. But now the petitioner/4<sup>th</sup> defendant mentioned in the Additional written statement that the suit properties were left by the father of the 1<sup>st</sup> defendant are self acquisition of this defendant. Hence there is large Contradictory plea taken by the petitioner/4<sup>th</sup> defendant in the written statement as well as the Additional written statement.

7) Further this petition has been filed by 4<sup>th</sup> defendant for his favour and also on behalf of 1<sup>st</sup> defendant. But the 1<sup>st</sup> defendant did not sign in either in this affidavit or

Additional Written statement. Further the 1<sup>st</sup> defendant admit in his written statement for the claim of the suit relief such as 1/6 partition in the suit properties. Hence the 1<sup>st</sup> defendant estobbed to take contradictory statement in the additional written statement. Further the petitioner/4<sup>th</sup> defendant stand in the additional written statement that the suit properties were settled through settlement deed by the 1<sup>st</sup> defendant. Hence his son namely Ranjithkumar is necessary party in the suit proceeding. But that fact already mentioned in the written statement filed by the fourth defendant in the year of 2010. But during that time he did not take any plea regarding the non joinder of necessary party in that written statement. Further it is settled law position that the plea of non-joinder of necessary party should be taken in the earliest point of time. Moreover the trail was already commenced on 07.04.2011. But this petition has been filed only on 08-2015. It is well settled position that the Additional written statement cannot be entertained for the purpose of fill up the lacuna. In this regard the Hon'ble High Court of Madras rendered a order in similer case such as.

2018(3) MWN (Civil) 803- A. Manohar Prasad and others Vs. Prasad Production Pvt. Ltd., cases.

CODE OF CIVIL PROCEDURE, 1908 (5 of 1908), Order 8 Rule 9 - Additional Written Statement – Filing of – Whether permissible suit filed in 2004 – Written statement filed by defendants in 2007 Application for filing Additional written statement filed in 2018 – stand of Petitioners that managing Director of Company was not authorised to file suit on behalf of Company and said fact was known from internet – Held, no reason explained for not mentioning same plea in written statement – Not explained why same plea was raised belatedly, ie., after 10 years of filing of written statement – In such circumstances, Order of Trial Court dismissing Application, upheld – Civil Revision Petition dismissed.

8) Further on perusal of records this petitioner already filed application to received the additional written statement and the same was already dismissed for default on 19.08.2014 in IA No. 126/2014. The petitioner/defendant also admit this factum in his

affidavit. But he did not come forward to restore that application. On perusal of records this suit is pending from 2009. Further on perusal of Additional written statement there was no pleading in respect of the new facts or new cause of action arose for filling this additional written statement. Further the petitioner cannot take contradictory plea against the content of settlement deed and statement filed by them in the earliest point of time. Further, in respect of deficit court fees the petitioner/4<sup>th</sup> defendant already pleaded in his written statement which was filed in the year of 2010. Hence there is no necessity to plead that fact in the additional written statement.

Hence in view of the above such facts and circumstances this petition is liable to be dismissed. In the result this petition is dismissed. No cost.

Dictated to the Steno Typist typed by her directly on the computer, corrected and pronounced by me in the open court this the 18<sup>th</sup> day of June 2019.

District Munsif,  
Vadipatti.