

**IN THE COURT OF PRINCIPAL DISTRICT AND SESSIONS JUDGE,
PUDUKKOTTAI.**

**PRESENT: Tmt. G. Subathira Devi, M.L.,
Principal District Judge.**

Wednesday, the 11th day of September 2024

I.A.No.05/2024 in O.S.No. 04/2018

1. Raman
2. Palaniyappan Petitioners/2nd and 3rd defendants

(Vs.)

Mani Respondent /plaintiff

This petition came up before me for final hearing on 09.09.2024 in the presence of Thiru. C. Sankar, Advocate for the petitioners and of Thiru. D. Parisuthanathan, Advocate for the respondent and after hearing the arguments of both sides, perusing the records and evidence, having stood for consideration till this date, this Court deliver the following:

ORDER

This petition under Order 8 Rule 9 of CPC praying to receive the written statement of 2nd and 3rd defendants.

2. The averments of petition in brief are as follows:-

The petitioner is the 3rd defendant in the original suit. The 2nd petitioner filed this petition for himself and on behalf of the 2nd defendant. The plaintiff, 1, 2, 9 to 11 defendants are brothers and sisters of the 2nd petitioner. The suit is filed by the plaintiff for the relief of partition and other reliefs of the suit properties. The 2nd petitioner appeared in the suit through his counsel. The 2nd petitioner and the 2nd defendant adopted the written statement filed by the 1st defendant and are conducting the suit.

Now the petitioners counsel advised them that the 2nd petitioner and the 2nd defendant have to file separate written statement, then only the petitioners can cross-examine the plaintiff. Now the petitioners filed written statement along with this petition. Hence the petitioners praying to receive the written statement of 2nd and 3rd defendants. Hence, this petition.

3. The averments of the counter filed by the respondent in brief are as follows:

The petition is not maintainable either in law or on facts. The reasons stated in the proof affidavit for filing separate written statement by the petitioners / 2nd and 3rd defendants are not acceptable. The 1st defendant had filed the written statement on 05.03.2019. The petitioners /2nd and 3rd defendants adopted the said written statement by filing a memo dated 05.03.2019 . Thereafter even after impleading the 9th to 11th defendants are parties, the petitioners adopted the additional written statement filed by the 1st defendant dated 30.01.2023. At this juncture, it is not acceptable that the petitioners filed this petition for filing a separate written statement after 5 years.

In the suit the respondent/plaintiff had filed the proof affidavit and documents on 23.12.2023 and the trial started on the same day. The plaintiff has been partly cross-examined by the defendants No. 1, the petitioners/2nd and 3rd defendants, 4 to 7 on 01.04.2024. The suit was adjourned for further cross-examination of plaintiff on 15.04.2024 and 04.06.2024. Thereafter on 18.06.2024 the plaintiff was partly cross-examined and again adjourned for further cross-examination of the plaintiff.

At this juncture , the petitioners have filed this petition belatedly to drag on the proceedings of the suit. There is no difference between the averments mentioned in the new written statement filed along with the petition and the earlier written statement filed by the 1st defendant. Hence praying to dismiss the petition with cost.

4. Heard on the both sides. Perused the records.

5. **Point for consideration :-**

(1) Whether the petition is to be allowed or not?

Point No.1 :-

6. This is the petition filed under Order 8 Rule 9 of CPC by the 2nd and 3rd defendants to receive their written statement. The objection raised by the respondent/plaintiff in his counter is that on 05.03.2019 the 1st filed his written statement and through Memo these petitioners/2nd and 3rd defendants adopted the written statement of the 1st defendant. After impleading defendants 9 to 11 also the 1st defendant filed his additional written statement on 30.01.2023. It was also adopted by these petitioners/2nd and 3rd defendants. In this consensus after 5 years it is not acceptable that the petitioners/2nd and 3rd defendants wanted to file separate written statement. The respondent/plaintiff examined himself as PW1 on 23.12.2023 and marked his side documents. Till 18.06.2024 petitioners/2nd and 3rd defendants was gaining time for cross-examination of PW1 in continuation and in the mean time this petition to receive the separate written statement of the petitioners/2nd and 3rd defendants is filed. Their written statement is replica the written statement of 1st defendant. Upon the already filed written statement of 1st defendant which is adopted

by Defendants 2 and 3 is sufficient to settle the issue between the plaintiff and defendants. Only to drag on the suit this petition is filed.

7. But on perusal of the written statement filed by the 1st defendant which was adopted by petitioners/2nd and 3rd defendants and the written statement filed along with this petition are similar upto 5th paragraph and different from the 6th paragraph. Hence, this court feels a chance is to be given for petitioners/2nd and 3rd defendants to establish their case.

8. In the result, the petition is allowed. No costs.

Directly dictated to the Steno-typist, typed by her in Computer, corrected and pronounced by me in open Court on this the 11th day of September, 2024.

Principal District Judge,
Pudukkottai.