

**IN THE COURT OF DISTRICT MUNSIF, KATPADI, VELLORE DISTRICT
PRESENT: THIRU. K.VENKATESAN, B.A.,B.L.,
DISTRICT MUNSIF, KATPADI.**

Monday, this the 15th Day of April – 2024

**I.A.No. 5 of 2022
In
O.S.No. 52 of 2020
(CNR.No.TNVL23-000099-2020)**

1. Arumugam
2. A.Santhoshkumar
3. A.Pushpa

.....Petitioners/Defendants

-Vs-

1. Venkatesan
2. S.Vinothini
3. P.Sangeetha

.....Respondents/Plaintiffs

This petition has come up today before this Court for orders, upon hearing the arguments of Thiru. K.Balachandar, the Counsel for Petitioners, and Thiru. P.Elavarasu, the Counsel for Respondents, and upon perusing the petition, counter and the case records, and having stood for consideration till this date, this Court delivers the following:-

ORDER

This petition has been filed by the Petitioners/Defendants under Order 8 Rule 9 and Section 151 of Code of Civil Procedure, to file an Additional Written Statement in the above Suit.

1. **Brief averments of the affidavit filed by the 1st petitioner is as follows:-**

The 1st petitioner is the 1st defendant in the Suit, and he filing this affidavit on behalf of other petitioners also, and he states that the respondents filed a Suit for Permanent Injunction as against them with false and frivolous allegations, and he already filed the Written Statement, and due to inadvertant and old age, he unable to explain his advocate regarding the Suit properties, and he want to explain about the ancestors properties and filed this petition to file an Additional Written Statement, and moreover, he mentioned in his written statement to file an Additional Written Statement when it requires, so far it is not to dragging on the proceedings, and if this Court never allows this petition, he will put great loss and hardship, and he will get pre-judice, and the Additional Written Statement is just and necessary to defend his case to succeed, and it is necessary and relevant for the determination of the dispute between them and the respondents, and he prays permission to file Additional Written Statement.

2. **Brief averments of the counter filed by the 1st respondent is as follows:-**

(Adopted by the Respondents-2 & 3)

2.1 The petition is filed by the petitioners to grant permission to file the Additional Written Statement in the main Suit in very belated stage is not maintainable either in law or on facts, and the respondents denies all the allegations and averments mentioned in the petition and affidavit are as false, and state that the petitioners/defendants have not pleaded the facts as pleaded in their Additional Written

Statement in their Original Written Statement, and the present Additional points are no way related to the Suit as well as their earlier Written Statement. But the petitioners pleaded new facts without any valid documents, and creates lot of doubt regarding the above Additional Written Statement.

2.2 As per the provision of Order 8 Rule 9 of CPC, the petitioners/defendants have not any pleading subsequent to the Written Statement with regarding his affidavit, and especially, the said Additional Written Statement is set new facts which are changed their previous defence in their Written Statement, and they would tried to take new defence, and that the above said facts itself clearly established that Additional Written Statement is only for the purpose of the present Suit, and also to drag on the judicial proceedings endlessly.

2.3 The main aim of the petitioners are drag on the judicial proceedings, and the petitioners are avoiding and preventing to attaining conclusion of this Suit, and the petitioners cannot be allowed to raise new plea or facts, which has not been raised in the Written Statement already filed, and after commencement of Trial, and after the examination of P.W-1, who is to be cross-examine, and the main Suit has been posted as Trial on 21.12.2021, and the 1st respondent also filed Proof Affidavit and marked documents Ex.A-1 to Ex.A-12, and posted for cross examination of P.W-1, and the petitioners also sought for time from 19.09.2022, 19.10.2022 and 27.10.2022, and filed the present petition with an intention to drag on the Suit, and there are no bonafide

reasons for filing the present petition, and prayed to dismiss the petition with cost of them.

3. Neither the petitioners nor the respondents have placed any oral or documentary evidence before this Court.

4. **Point for Consideration:-**

a) Whether this petition is to be allowed or not?

5. **Answering to the Point:-**

Both sides has been heard. Records Perused. Upon careful analysis of the records, it is found that the present petitioners are the defendants, and the respondents herein are the plaintiffs in the above Suit, and the respondents have filed the above Suit for Permanent Injunction restraining the defendants, and their agents, servants, successor in interest and etc., from interfering into the plaintiffs' peaceful possession and enjoyment over the Suit property, and for costs.

5.1 The petitioners/defendants filed this petition to file an Additional Written Statement with specific particulars in respect of the Suit property is an Ancestral property and whose were in possession and enjoyment till 1951, and the Partition held between 1. Govinda Goundar, 2. Vedhachala Goundar, and 3. Varada Goundar, by way of Koorchit dated 11.10.1951, and its division of properties were allotted to whom, and more particularly, one part of S.No.77/2 and its extent was allotted to whom, and also, the Partition Suit filed by the petitioners/defendants before this Court in O.S.No.90/2020

as against the legal heirs of Govinda Goundar and Vedachala Goundar, and its pendency, and the petitioners/defendants claimed that the Suit property is absolutely belongs to the legal heirs of Vedachala Goundar, and the plaintiffs are not having any right, title and share over the Suit property, and on these aspect also, prayed to dismiss the Suit.

5.2 For that, the respondents/plaintiffs objected by stating that as per provision the petitioners/defendants cannot pleading subsequent to their Written Statement, and the Additional Written Statement pleading is new set of facts which changed their previous defence taken in their Written Statement, and they cannot take a new plea or defence, and already they have filed Written Statement, and the trial was commenced, and the 1st respondent examined himself as P.W-1 by way of Proof Affidavit, and marked documents Ex.A-1 to Ex.A-12, and the petitioners/defendants took time for cross of P.W-1 on 19.09.2020, 19.10.2022 & 27.10.2022, and now they have filed this petition with an intention to drag on the Suit, and there are no bonafide reasons for filing this petition and prayed to dismiss the petition. During enquiry, the respondents/plaintiffs Counsel has submitted his Written Arguments and relied the following Judgments of our **Hon'ble High Court of Madras** in the case of 1) **Murthi Gounder Vs. Karuppanna Gounder**, reported in **AIR 1976 Mad 302**, & 2) **Devanbu Vs. Sundara Raj, Susai Raj, Ramanujam**, reported in **2005 (1) CTC 563** & those are considered.

6. As far as Additional Written Statement is concerned, the Additional Written Statement can be filed at any stage and the Court has discretion to receive the Additional

Written Statement if the party fail to raise any question regarding any of the defence in his Written Statement. As per Order 8 Rule 9 of Code of Civil Procedure empower the Court that;

“Rule 9 – Subsequent Pleadings.-

No pleading subsequent to the Written Statement of a defendant other than by way of defence to Set Off or Counter Claim shall be presented except by the leave of the Court and upon such terms as the Court thinks fit, but the Court may at any time require a Written Statement or Additional Written Statement from any of the parties and fix a time of not more than thirty days for presenting the same.”

7. In this case, already the evidence of plaintiffs side was commenced, and now, the case is pending at the stage of P.W-1 cross. It is true that the defendants had opportunity to raise such plea in their Written Statement, and they have not properly stated the reason for filing the Additional Written Statement, and they have also raised new set of facts in additional which are not raised in their original Written Statement.

8. In this Connection, this Court wants to bank the Judgment of our **Hon’ble Supreme Court of India** in the case of **Olympic Industries Vs. Mulla Hussainy Bhai Mulla Akberally and others**, reported in **(2009) 15 SCC 528**, wherein the Hon’ble Supreme Court, following its earlier decision in **Usha Balasaheb Swami & Ors., Vs. Kiran Appaso Swami & Ors.**, reported in **(2007) 5 SCC 602**, held that even by filing an amendment or additional written statement, it is open to defendant to add a new

ground of defence or to substitute or alter the defence or even to take inconsistent pleas in the Written Statement so long as the pleadings do not result in causing grave injuries/irretrievable prejudice to plaintiff.’ It is further observed therein that mere delay is not sufficient to refuse amendment of pleadings or an additional written statement. If there is delay in amendment of pleadings or filing of an additional written statement under Order 8 Rule 9 of CPC, where no prejudice is caused to party opposing such amendment or acceptance of additional written statement, then it could be easily be compensated by costs. Apart from that, even if the examination of a prosecution witness or his cross-examination is over, then also, it is open to the Court to accept the additional written statement by the other party, by putting some cost penalty for the delay.

9. The above settled position was followed by our **Hon’ble High Court of Madras** in the case of **Bhakthavatchalam Vs. Deiveegan**, reported in **2022 (2) L.W. 835**, held that ‘the delay is not a ground for dismissal of an application filed under Order 8 Rule 9 of CPC, no prejudice was caused to the party opposing such amendment or acceptance of Additional Written Statement.’

10. As already stated above, under Order 8 Rule 9 of CPC, while filing an Additional Written Statement, it is open to the defendant to add a new ground of defence or substituting or altering the defence or even taking inconsistent pleas in the Written Statement as long as the pleading do not result in causing grave injustice and irretrievable prejudice to the plaintiff or displacing him completely.

11. It is also a well-established principle that Court should be generous in allowing the amendment of a Written Statement than in the case of the plaint. Further, it is the duty of the Court to prevent misuse of the pleadings by the litigants. Courts have to ensure that what could not be achieved by getting the pleadings amended should be allowed to be got over, by filing reply, or rejoinder, as the case may be, and vice versa.

12. It is seen from the Additional Written Statement that the defendants/petitioners herein only wanted to explain the nature of Suit properties, and its originations & by whom it was enjoyed for all these years and what way they have got possession and enjoyment over the Suit properties, and more particularly, one part of S.No.77/2, and its extent was allotted to whom, and also, the Partition Suit filed by the petitioners/defendants before this Court in O.S.No.90/2020 as against the legal heirs of Govinda Goundar and Vedachala Goundar, and its pendency, and further, the petitioners/defendants claimed that the Suit property is absolutely belongs to the legal heirs of Vedachala Goundar, and the plaintiffs are not having any right, title and share over the Suit property.

13. As for the contention of the Learned Counsel for the respondents that the petitioners had filed a belated petition for acceptance of an Additional Written Statement when chief examination of P.W-1 was already over, it is to be stated that, as already stated above, delay is not a ground, for which additional written statement could not be allowed, as it is well settled that mere delay is not sufficient to refused to allow

amendment of pleadings or filing of additional written statement. In other words, delay is no ground for dismissal of an petition under Order 8 Rule 9 of CPC, where no prejudice is caused to the party opposing such amendment or acceptance of additional written statement, which would easily be compensated by costs.

14. It is the duty of the Court to provide opportunity to reveal all the defences in the interest of justice, and in order to avoid multiplicity of proceedings but this Court is of the considered view that if this petition is allowed that will cause pre-judice to the respondents/plaintiffs since the trial was already commenced on their side, and the same can be compensated. From the above cumulative discussions made, this Court is inclined to allow this petition on terms. Accordingly, the point is answered in favour of the petitioners.

15. **Result:-**

In fine, in the interest of Justice, this Court is inclined to allow this petition on cost with following conditions:

- 1) That the petitioners shall pay a sum of Rs.4,000/- payable to the respondents/plaintiffs on or before 06.06.2024, if failing which this petition shall stand dismissed without any further reference.
- 2) That the petitioners shall not drag on the matter once the case is posted in the list.

-//Dictated to the Steno-typist and typed by her computer and after rectification taken print out and pronounced by me in the Open Court, on this the 15th Day of April 2024.//-

(Sd/-)..K.Venkatesan
DISTRICT MUNSIF
KATPADI

Both sides documents and witnesses: **NIL**

(Sd/-)..K.Venkatesan
DISTRICT MUNSIF
KATPADI