



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.06.2025

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THE HON'BLE MR. JUSTICE M.DHANDAPANI

C.R.P.(PD)(MD)No.1511 of 2025

and

C.M.P.(MD).No.7527 of 2025

S.Kasilingam (died)

1.K.Murugan

2.K.Senthilvel

3.K.Gopalakrishnan

4.M.Anand

...Petitioners

Vs.

1.M.Rajagopal

2.M.Malaisamy

M.Subramanian (Died)

3.M.Balakrishnan @ Ravi

4.M.Velmurugan

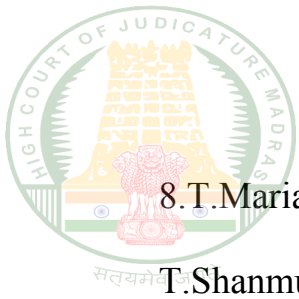
5.N.Vijayakumar

6.M.Rajagopal

S.Thangasamy (Died)

T.Balasubramanian (Died)

7.T.Murugesan



8.T.Mariappan

T.Shanmuganathan (Died)

T.Chandrasekar (Died)

P.V.S.Nataraja Konar (Died)

9.N.Krishnamoorthy

10.N.Murugesan

N.Baskaran (Died)

S.Mani (Died)

11.M.Pradeepkumar

12.Arulmigu Kallalagar Temple,
Alagarkoil,represented through
its Executive Officer,
having office at Alagarkoil,
Madurai.

13.G.Srinivasan

14.M.Kannan
(Respondent Nos.13 and 14 notice not necessary)

...Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 24.03.2025 passed in I.A.No.8 of 2025 in O.S.No.363 of 2004 on the file of the District Munsif Court, Melur, Madurai District and allow the CRP.

For Petitioner : Mr.S.Lakshmanan

For R1 to R9,

& R11 : Mr.N.Murugesan

For R10 : Mr.N.Madhava Govindhan



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For R12

: Mr.B.Saravanan,

Additional Government Pleader

* * * * *

ORDER

This petition has been filed seeking orders to set aside the fair and decretal order dated 24.03.2025 passed in I.A.No.8 of 2025 in O.S.No.363 of 2004 on the file of the District Munsif Court, Melur, Madurai District.

2. The respondent Nos.1 to 11 herein filed a suit in O.S.No.363 of 2004 before the learned District Munsif, Melur, claiming declaration that the respondent Nos.1 to 11 and respondent Nos.13 and 14 and the petitioners are entitled to perform Mandagapadi in the suit property and consequentially restraining the petitioners and respondent Nos.13 and 14 herein from interfering with the rights of respondent Nos.1 to 11 to perform the Mandagapadi during the Chithirai festival in the suit property.

3. The respondent Nos.1 to 11 are the plaintiffs. The petitioners and the respondent Nos.12 to 14 are the defendants.

4. Pending suit, the petitioners filed I.A.No.8 of 2025 before the learned District Munsif, Melur, to receive an additional written statement on their side. The said petition was dismissed by the learned District Munsif, Melur on



24.03.2025. Aggrieved over the same, the petitioners have filed this present petition.

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5. The learned counsel appearing for the petitioners would submit that the petitioners denied the claim of respondent Nos.1 to 11, stating that the suit property is their ancestral property as per the title deed. Hence, respondent Nos. 1 to 11 cannot claim the relief as a matter of right. However, respondent Nos.1 to 11 attempted to utilize the suit property for commercial purpose. Since the petitioners' father, viz., S.Kasilingam, who was the defendant in the suit, subsequently died, thereafter, the petitioners were impleaded as parties and even prior to the suit, the petitioners' father cancelled the permissive right of respondent Nos.1 to 11 to participate in the Mandagapadi given by the petitioners' grandfather and has sent an objection to the Kallagar Devasthanam and the same was communicated to the second respondent herein.

5.(i). The petitioners filed an application in I.A.No.8 of 2025 in O.S.No. 363 of 2004 under section 151 of C.P.C. before the trial Court to receive additional written statement of the petitioners under Order 8 Rule 9 of C.P.C. after filing of amended plaint. However, the said application was rejected on the ground of delay and the delay was not properly explained in the affidavit. Challenging the same, the present petition has been filed.



5.(ii). The learned counsel appearing for the petitioners would submit that the issue arose in the present petition is no longer *res integra*. He relies upon the judgment of the Hon'ble Supreme Court in **Civil. Appeal Nos.4148-4149 of 2009** in the case of ***Olympic Industries Vs. Mulla Hussainy Bhail Mulla***. The said decision was followed by this Court reported in **2024-4-L.W.924** in the case of ***Lakshamma and another Vs. yasodhamma and another***. Accordingly, he prays for allowing the petition.

6. Per contra, the learned counsels appearing for respondent Nos. 1 to 11 would submit that, admittedly, the suit has been pending since the year 2004. After a lapse of 21 years, the present application has been filed under Order 8 Rule 9 of CPC. Hence, the trial Court has rightly rejected the application, and the same does not warrant interference.

7. At this juncture, the learned counsel appearing for the petitioners would submit that this Court had already issued a direction to the trial Court to dispose of the main suit. However, the said suit has not been disposed of till date.

8. Heard the learned counsel on either side.

9. Admittedly, the suit is pending from the year 2004. The present issue



before this Court pertains to the filing of the additional written statement, which was rejected by the trial Court. The above said issue was dealt with by the

Hon'ble Supreme Court of India in **Civil. Appeal Nos.4148-4149 of 2009 in the case of Olympic Industries Vs. Mulla Hussainy Bhail Mulla** and the relevant portion in the said judgment is extracted hereunder:

“7. Having heard the learned counsel for the parties and after going through the additional counter statement as well as the original counter statement and the application for fixation of fair rent and other materials on record, we are of the view that the High Court was not justified in interfering with the concurrent orders of the Rent Control Authorities in the exercise of its revisional power. A plain reading of the impugned order of the High Court would show that two grounds were given by the High Court to reject the application for acceptance of the additional counter statement filed by the appellant. The first ground was that the appellant had filed a belated application for acceptance of an additional counter statement when examination of P.W.1 was already over. So far as this ground is concerned, we do not find that delay is a ground for which the additional counter statement could not be allowed, as it is well settled that mere delay is not sufficient to refuse to allow amendment of pleadings or filing of additional counter statement. At the same time, delay is no ground for dismissal of an application under Order 8 Rule 9 of the Code of Civil Procedure where no prejudice was caused to the party opposing such amendment or acceptance of additional counter statement which could easily be compensated by cost. That apart, the



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delay in filing the additional counter statement has been properly explained by the appellant. The averments made in the additional counter statement could not be raised by the appellant earlier since the appellant was under the impression that the lease agreement was destroyed in a fire accident and that he incidentally discovered the lease files in an old trunk only in October 1996 while he was cleaning the house for Pooja celebration. This explanation, in our view, cannot be rejected. Therefore, the first ground on which the additional counter statement sought to be rejected by the High Court in the exercise of its revisional power, in our view, cannot be sustained. The second ground on which the High Court had interfered with the concurrent orders of the tribunal below in accepting the additional counter statement was that a new plea was raised in the same in respect of which there was no slightest basis in the original counter statement filed by the appellant. According to the High Court, the plea that vacant land was let out to the appellant is a fundamental alteration of the pleadings already put forth by the appellant and the appellant cannot be permitted to introduce totally a new case. The additional counter statement alleging that there was written agreement and that the appellant is only a lessee of vacant site introduces totally a new case which would totally displace the landlord. The High Court held that such a new plea cannot be permitted to be taken by permitting the appellant to file additional counter statement. In our view, this is also not a ground for which the High Court could interfere with the concurrent orders of the Rent Control Tribunal and reject the application for



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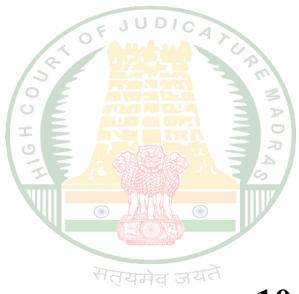
permission to file additional counter statement. In our view, even by filing an amendment or additional counter statement, it is open to the appellant to add a new ground of defence or substituting or altering the defence or even taking inconsistent pleas in the counter statement as long as the pleadings do not result in causing grave injustice and irretrievable prejudice to plaintiff or displacing him completely. [See : Usha Balasaheb Swami & Ors. vs. Kiran Appaso Swami & Ors. (2007) 5 SCC 602]. Therefore, we are unable to agree with the High Court on this ground as well. It is also well settled that the courts should be more generous in allowing the amendment of the counter statement of the defendant then in the case of plaintiff. The High Court in its impugned order has also observed that in order to file an additional counter statement, it would be open to the defendant to take inconsistent plea. The prayer for acceptance of the additional counter statement was rejected by the High Court on the ground that while allowing such additional counter statement to be accepted, it has to be seen whether it was expedient with reference to the circumstances of the case to permit such a plea being put forward at that stage. As noted herein earlier, the only ground on which the High Court had rejected the acceptance of the additional counter statement was (i) by filing of such additional counter statement, the appellant was introducing a new case and (2) the entire trial was to be reopened causing great prejudice to the respondents whose examination was completed. It was also observed by the High Court that the appellant cannot be able to take such inconsistent plea by filing additional



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counter statement after cross-examination of the appellant. In our view, the High Court was in error in interfering with the concurrent orders of the Rent Control Tribunal, as from the fact stated we find that no prejudice was caused to the respondents and even if some prejudice was caused that could be compensated by cost. As noted herein earlier, the appellant had already stated in his application for acceptance of additional counter statement the reasons for taking such new plea, viz., he could trace out the lease deed pertaining to the lease only when he was cleaning the boxes. The respondents have also not disputed as to the existence of the lease deed only they are disputing the filing of the additional counter statement at such a belated stage. This being the position, we are of the view that even if the examination of PW-1 or his cross-examination was over, then also, it was open to the court to accept the additional counter statement filed by the appellant by awarding some cost against the appellant. It is also well settled that while allowing additional counter statement or refusing to accept the same, the court should only see that if such additional counter statement is not accepted, the real controversy between the parties could not be decided. As noted herein earlier, by filing an additional counter statement in the present case, in our view, would not cause injustice or prejudice to the respondents but that would help the court to decide the real controversy between the parties. In our view, the High Court was, therefore, not justified in rejecting the application for permission to file additional counter statement as no prejudice could be caused to the respondent



which would otherwise be compensated in terms of cost.”

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10. The above said decision was followed by this Court reported in **2024-4-L.W.924** in the case of ***Lakshamma and another Vs. Yasodhamma and others*** and the relevant portion in the said judgment is extracted hereunder:

“18. On a careful perusal of the judgments relied on by the learned counsel for the petitioner, it is clear that when an application is filed under Order 8 Rule 9 of CPC and when the trial had already commenced and the plaintiffs evidence has been completed and in the absence of any pleading, not set forth in the original written statement, may render such evidence futile.”

11. On perusal of the above said judgments, it is clear that as per Order 8 Rule 9 of C.P.C., no pleadings subsequent to the filing of the written statement shall be presented except by the leave of the Court and 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.

12. As such under this provision, the discretion is vested in the Court to permit the petitioners to file an additional written statement or not considering the facts and circumstances of the case. It is true that there is no dispute in the contention that by bringing a new or additional or inconsistent plea by way of filing an additional written statement, definitely the respondent Nos.1 to 11 may



be put to serious prejudice and hardship. In the present case, the trial has not yet been commenced. Further, it makes it clear that a mere delay is not a ground for

rejecting the application for filing additional written statement.

13. In view of the above discussion, the order order dated 24.03.2025 passed in I.A.No.8 of 2025 in O.S.No.363 of 2004 on the file of the District Munsif Court, Melur, Madurai District is set aside. The trial Court is directed to accept the additional written statement from the petitioners and allow the parties to let in evidence before the trial Court. The trial court is directed to dispose of the suit in O.S.No.363 of 2004 within a period of six months from the date of receipt of a copy of this order.

14. Accordingly, the Civil Revision Petition stands allowed. No costs. Consequently, the connected miscellaneous petition is closed.

02.06.2025

Internet:Yes/No

Index:Yes/No

TSG

To

1.The District Munsif Court, Melur, Madurai District.



2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court, Madurai.

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M.DHANDAPANI, J.

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