courtkutchehry.com

Company : Sol Infotech Pvt. Ltd.

Website : www.courtkutchehry.com

Printed For :

Date : 24/08/2025

P.N. Amirthavalli, P.N. Nallasamy and P.N. Sundararajan Vs S.V. Saravanan

Court: Madras High Court

Date of Decision: Dec. 16, 2009

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Order 6 Rule 17
Constitution of India, 1950 â€" Article 227

Hon'ble Judges: M. Venugopal, J

Bench: Single Bench

Advocate: P.J. Rishikesh, for the Appellant; R. Bharanidharan, for V. Anandamoorthy, (Respondent/Caveator), for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

M. Venugopal, J.
The petitioners/respondents/plaintiffs have filed this Civil Revision Petition as against the order dated 10.08.2009 in I.A.

No. 126 of 2009 in O.S. No. 333 of 2000 passed by the learned I Additional Subordinate Judge, Gopichettipalayam in allowing the application

filed by the respondent/defendant under Order 8 Rule 9 of the CPC praying permission of the Court to receive the Additional written statement.

2. The Trial Court while passing orders in I.A. No. 126 of 2009 dated 10.08.2009 has interalia opined that ''...Although question of law need not

be pleaded to avoid objection on moral question of law and fact certain pleadings on question of law can be termitted to be pleaded and by

allowing this application no prejudice will be cause to the plaintiffs. But the respondent/petitioner/defendant has come up with this objection after a

long time that too after the examination of PW1. But at the same time to give an opportunity to the respondent/plaintiff to put forth his defence in

full form this Court is of the view that the petition can be allowed but on cost and accordingly allowed the application on payment of cost of Rs.

1,000/- to the revision petitioners to be paid on or before 19.08.2009 and post the matter to be called on 28.09.2009.''

3. The learned Counsel for the revision petitioners/plaintiffs urges before this Court that the impugned order of the Court in I.A. No. 126 of 2009

dated 10.08.2009 is an erroneous one in the eye of law, weight of evidence and probabilities of the case and the trial Court should have seen that

the respondent/defendant in projecting the Additional written statement has not given no cogent reasons and has filed the application under Order 8

Rule 9 as a matter of right and by allowing the I.A. No. 126 of 2009 the nature of suit has been changed and that will result in a denovo trial and it

will be against the interest of the revision petitioners/plaintiffs, but these aspects of the matter have not been appreciated by the trial Court in a

proper perspective and the reasons sought by the respondent/defendant in praying permission of the trial Court to receive the Additional written

statement in issue are clearly an after thought and they are mentioned with the sole aim of protracting the suit and as a matter of fact the contentions

sought to be raised in the Additional written statement are within the knowledge of the respondent at the time of filing of the original written

statement and practically there are no explanations forthcoming on the part of the respondent/defendant as to why the issues sought to be raised in

the Additional written statement have not been projected in the original written statement and apart from the above there is almost a delay of nine

years in filing the Additional written statement and on this ground alone the application has to be dismissed and the trial court by allowing the I.A.

No. 126 of 2009 has granted leave to the respondent/defendant to present a fresh pleading and what has been sought for by the

respondent/defendant are not the amendments under Order 6 Rule 17 of the Code of Civil Procedure, but the same are under Order 8 Rule 9 of

CPC and in short the respondent/defendant has projected the I.A. No. 126 of 2009 with the malafide intention to drag on the suit proceedings and

these factual and legal aspects of the matter have not been adverted to by the trial Court in a real perspective which has resulted in miscarriage of

justice and therefore prays for allowing the Civil Revision Petition in furtherance of substantial cause of justice.

4. Per contra, the learned Counsel for the respondent/defendant submits that mere delay is not a ground to refuse the reception of Additional

written statement and the respondent/defendant earlier has engaged a Counsel and later the Counsel for the respondent has been changed and only

the Counsel who has come into a picture subsequently has filed the application in I.A. No. 126 of 2009 and even an inconsistent pleas can be

raised by the respondent/defendant and since the averments made in the Additional written statement go to the root of the maintainability of the suit

being filed by the revision petitioners, there is no impediment in law if the trial Court receives this Additional written statement and as a matter of

fact the trial Court has exercised its discretion in a proper, fair and valid manner and the said order does not suffer from any serious infirmity and

patent illegality and therefore, this Court cannot interfere with the order of the Trial court passed in I.A. No. 126 of 2009 sitting in revision.

5. Expatiating his submissions, the learned Counsel for the revision petitioners/plaintiffs cites the decision in N. Srinivasan Vs. Muthammal, , at

Paragraph 12 wherein it is held as follows;

It is also to be noted that there is absolutely no bonafides on the part of the defendant to have come forward with a belated petition for amendment

even though he pleads that he has seen the promissory note only when he was in the witness box. Such a plea cannot be accepted having regard to

the clear stand taken by him in the original statement. As stated earlier, in the original written statement he has specifically pleaded that the month as

found in the promissory note had been corrected, that he had executed the promissory note only in the month of January, 1992 and not in

November, 1992. Such a pleading could not have been made without having seen the suit promissory note only when he was in the witness box

cannot be accepted and has to be held as false. It is also pertinent to note that in this case the plaintiff after examining herself as PW1 has closed

her case and in the midst of examining himself as DW1 the defendant has come forward with the present petition for amendment of the written

statement. In a decision reported in, Murthi Gounder v. Karuppanna Gounder AIR 1976 Mad. 302, C.J.R. Paul, J. had occasion to consider the

effect of filing belated additional written statement and considering the stage of which the application was filed, learned Judge has held that

undoubtedly prejudice would be caused to the plaintiff necessitating the filing a reply statement and framing of fresh and different issues for

consideration.

6. He also relies on the decision in Murthi Gounder Vs. Karuppanna Gounder, wherein it is observed thus;

It is stated in the affidavit filed in support of the petition to receive the additional written statement that by inadvertence, some important pleas were

omitted to be stated. It is stated by the learned Counsel for the revision petitioner that from the Panchayat records, his client came to know that

there was a cart track in existence in the place where the present pucca road has been put up by the Panchayat. This is not a case where by mere

inadvertence, certain pleas were not put forward. This is not a case where nearly two years after having filed his written statement, the first

defendant had acquired some further information and wanted to set up a case which is different from the case which he had originally set up in his

written statement. Considering the stage at which such an application has been filed, undoubtedly, prejudice would be caused to the plaintiff who

will now be forced to file a reply statement and as a consequence thereof, fresh and different issues will have to be framed and the trial would have

to begin once over again. Taking these circumstances into consideration, I am of the view that the learned District Munsif rightly refused to permit

the revision petitioner to file the additional written statement. I see no ground to interfere. The petition is, therefore, dismissed.

7. Added further, the learned Counsel for the petitioners seeks in aid of the decision in Chinnammal v. Shanmugham and two Ors. 2007-3-L.W.

205 wherein it is held as follows;

In the additional written statement the defendants wanted to plead that the plaintiff is a tenant and she was paying the rent - If the additional written

statement is allowed, this would cause definite prejudice to the plaintiff who will be forced to file a reply statement and as a consequence thereof,

fresh and different issues would have to be framed and the trial has to begin once over again - Therefore the trial court is wrong in holding that no

prejudice would be caused to the plaintiff if additional written statement is to be filed.

8. He also brings it to the notice the decision of this Court in Tajdeen v. Abdul Muthalif (2009) 3 MLJ 959 to the effect that;

Only on sound reasons enumerated under Order 8 Rule 9 of the Civil Procedure Code, Court can grant leave to file additional written statement.

Defendant cannot be permitted to file additional written statement by taking an antithetical stand, quite contrary to that taken in the written

statement after a major part of the trial was over.

9. However, the learned Counsel for the respondent/defendant cites the decision of this Court in John C. Christian and Anr. v. R. Adhikesavan

and 11 Ors. 2009 (5) CTC 29 whereby and where under it is held that;

On a perusal of the written statement originally filed as well as the additional written statement, in the light of the affidavit filed in support of the

Application to receive the additional written statement, I am of the view that serious prejudice would be caused in case the respondents are denied

an opportunity to explain their case and to lead evidence on their side. In any case, there is no error or illegality in the Order of the learned Trial

Judge warranting interference in a supervisory jurisdiction under Article 227 of the Constitution of India.

10. He also relies on the decision of the Honourable Supreme Court in Olympic Industries Vs. Mulla Hussainy Bhai Mulla Akberally and Others,

wherein it is held that;

Courts should be generous in allowing amendment of counter statement of defendant than in case of plaint.

11. To lend support to his contention that a Court of Law should be extremely liberal in granting prayer for amendment of pleading unless serious

injustice or irreparable loss is caused to the other side, the learned Counsel for the Respondent/Defendant places reliance on the decision of

Honourable Supreme Court, Baldev Singh and Others Etc. Vs. Manohar Singh and Another Etc., wherein it is held that;

The wide power and unfettered discretion has been conferred on the Court to allow amendment of pleadings, in such manner and on such terms as

it appears to Court to be just and proper.

12. Continuing further, the learned Counsel for the respondent/defendant cites the decision of this Court in John S. Dorai v. Bishop in Madras,

Church of South India Madras Diocese, Chennai and Anr. (2008) 2 MLJ 799 (Mad) wherein it is observed that;

Ample powers are given to the Court to grant leave upon such terms, as it thinks fit and the rule omitted by Amendment Act (46 of 1999) has

been restored by Amendment Act (22 of 2002) etc.

13. Apart from the above, the learned Counsel for the respondent/defendant cites the decision in Thiyagarajan v. Manivannan (2007) 7 MLJ 444

(Mad) wherein it is held that;

Courts should be liberal in grating relief under Order 8 Rule 9 etc.

14. Continuing further, the learned Counsel for the respondent draws the attention of this Court to the decision in Muthuraman Vs. Muthukumaran,

wherein it is held that;

Additional written statement should be allowed if they are relevant to prove facts placed before Court and order rejecting filing of additional written

statement is set aside and permission granted.

15. Be that as it may, the learned Counsel for the respondent/defendant relies on the decision in S. Suresh v. Sivabalakannan and Ors. 2007 (3)

CTC 554 wherein it is held that;

Order of trial Court rejecting leave to file Additional Written Statement has been set aside and the Trial Court has been directed to take on file the

Additional Written Statement and that the defendant has been directed to pay costs.

16. In regard to the contention that even inconsistent pleas can be raised by the defendant in seeking an amendment to written statement, the

learned Counsel for the respondent/defendant brings it to the notice the decision of this Court in Damayanthi Kailasam Vs. Mrs. D.F. Philips, Lt.

Col. C.C. Philips, Mrs. Rajeswari Shinde and Mrs. Jayanthi, wherein it is held that;

Courts should be extremely liberal in granting prayer for amendment unless serious injustice or irreparable loss is caused to the other side.

17. Yet another decision in Radhabai Ammal and Anr. v. N. Loganathan and Ors. 2005 (5) CTC 38 and 39 is brought to the notice of this Court

wherein it is among other things held that;

7. No doubt, the defendant can file a written statement as a matter of right and for doing so, he does not have to obtain the permission of the Court

for filing additional written statement. Permission of the Court has to be obtained under Order 8, Rule 9, C.P.C. Under what circumstances leave

is to be granted and how the discretion has to be exercised depends on the facts and circumstances of each case and in all such cases, the party

who seeks leave has to explain as to why this contention was not raised in the earlier pleadings. While exercising the discretion, the Court will

consider the conduct of the party, stage of the litigation, delay that has occasioned, how far the opposite party will be put to hardship.

8. The dictum laid down with regard to the powers of the Court in granting leave for filing additional written statement is that the Court should take

a lenient view, it should be positive and should have a liberal approach. The said proposition has been enunciated in the Judgment Subramanian

and three others Vs. Jayaraman, ,

9. The approach of Law in permitting the Court to grant leave in such cases in positive. But, the Court while granting the leave could direct the

petitioner to comply with certain terms that the Court thinks fit and hence absolutely there is no impediment or hurdle or legal barrier put forth by

the Rule in allowing any additional statement subsequent to the written statement and the only shot provided in the arms of the Court for granting

leave is that it could allow the application on such terms as it thinks fit.... Therefore, it could be safely concluded that in all such cases, wherein the

defendant approached the Court with an application under Order 8, Rule 9 of the CPC praying to grant leave, Courts are expected to be liberal in

granting the leave but of course on terms as the Court thinks fit in the circumstances of the individual case.

18. Also, the learned Counsel for the respondent/defendant cites the decision in Andhra Bank Vs. ABN Amro Bank N.V. and Others, wherein

the Honourable Supreme Court has among other things held that;

Application filed by the defendant seeking to tender in evidence an affidavit of examination-in-Chief containing statements which were relevant and

germane to the issues involved in the suit and the rejection of the same that the affidavit did not contain any admission has been found it to be not

proper.

19. Continuing further, the learned Counsel for the respondent/defendant cites the decision in Usha Balashaheb Swami and Others Vs. Kiran

Appaso Swami and Others, wherein it is held that;

Addition of a new ground of defence or substituting or altering a defence or taking inconsistent pleas in written statement can be allowed as long as

the amended pleadings do not result in causing grave injustice and irretrievable prejudice to plaintiff or displacing him completely.

20. The learned Counsel for the respondent/defendant cites on the decision in Revajeetu Builders and Developers Vs. Narayanaswamy and Sons

and Others, wherein the Honourable Supreme Court has observed that;

While deciding applications for amendments the Courts must not refuse bona fide, legitimate, honest and necessary amendments and should never

permit mala fide, worthless and/or dishonest amendments.

21. Lastly, the learned Counsel for the respondent/defendant relies on the decision of the Honourable Supreme Court in M/s. Estralla Rubber Vs.

Dass Estate (Pvt.) Ltd., wherein it is held that;

Delay in making application under Order 6 Rule 17 of the CPC on its own is not a ground for rejection of the same.

22. This Court has paid its anxious consideration to the arguments advanced on either sides by the learned Counsel appearing for the parties and

noticed the same.

23. As far as the present case is concerned, it is not in dispute that the main suit has been filed in the year 2000 and the trial commenced in July

2009 and the matter has been posted for cross examination of PW1. At that point of time only after a long lapse of nine years the present I.A. No.

126 of 2009 has been filed by the respondent/defendant praying permission of the trial Court to receive the subsequent pleading namely the

Additional written statement. In the Additional written statement sworn on 14.07.2009 the respondent/defendant has raised many factual and legal

pleas questioning the maintainability of the suit and also that the liability cannot be fastened on the respondent/defendant, based on the contention

that the respondent/defendant has been a Director of the Company at the relevant point of time etc. As a matter of fact, a perusal of the original

written statement discloses that the pleas both factual and legal one projected in the Additional Written statement have not been adverted to by the

respondent/defendant in a qualitative and quantitative fashion. In short, the earlier written statement is a bereft of many factual and legal pleas that

have been projected subsequently in the Additional written Statement. The only reason assigned by the learned Counsel for the

respondent/defendant as to why the averments made in the Additional written statement have not been projected earlier by the

respondent/defendant is that the Counsel for the respondent/defendant has been changed subsequently and since in the Additional written

statement the legal and factual pleas are raised there is no embargo in law or the Court of law to allow the same for the simple reason for a final

and complete adjudication of the matter the Additional written statement can be received by the Court and that the Court has exercised its

discretion in a proper manner and in the instant case the trial Court has exercised its discretion not in an arbitrarily or capricious manner. Per

contra, the trial Court has exercised the same in a just, fair and equitable manner.

24. It is an axiomatic fact in law that the Additional written statement or subsequent pleading cannot set up a new case totally or state facts at

direct variance with the original written statement so as to completely and comprehensively change the character of the suit or the matters in issue.

It is true that an application under Order 8 Rule 9 of CPC by any stretch of imagination cannot be considered as one under order 6 Rule 17 of the

Civil Procedure Code, since both are contextually a different one.

25. If the facts projected earlier in the written statement have not reflect the true state of defence projected by the respondent/defendant, then the

leave may be granted by a Court of law to take into account of the averments made in the Additional written statement and that too when both the

factual and legal pleas are raised, since there is no embargo in law to receive the same in the processual system of jurisprudence by adopting a

Justice oriented approach to subserve the ends of justice and to do complete justice to the parties. Further, in the absence of prejudice leave will

normally be granted to file subsequent pleading liberally. Really speaking, Order 8 Rule 9 of CPC invests the Court with the widest possible

discretion and enables it to accept the Additional written statement. It is to be pointed out that the Civil Law does not altogether prohibit

inconsistent pleas.

26. At this juncture, this Court pertinently points out when the permission is accorded to a party to file a written statement it means also a leave to

reply to the portion amending the plaint. However, the same cannot be construed as leave to treat the subject matter afresh or to ignore the earlier

written statement projected by the respondent/defendant.

27. On a careful consideration of the respective contentions and in view of the qualitative and quantitative detailed discussions mentioned supra,

this Court is of the considered view that even though the respondent/defendant has projected the I.A. No. 126 of 2009 under Order 8 Rule 9

praying permission to receive the Additional written statement the averments made in the Additional written statement are a mixed issues of factual

and legal pleas which have to be traversed by the trial Court at the time of trial in the manner known to law and therefore the trial Court has

exercised its discretion in a proper, fair and equitable manner and by any means the discretion exercised by the trial Court cannot be said to be an

excessive one and in fact it does not violate any of the procedures of the CPC and looking at from any angle, this Court comes to an inevitable

conclusion that the Civil Revision Petition is devoid of merits and resultantly, the same fails.

28. In the result, the Civil Revision Petition is dismissed leaving the parties to bear their own costs. Consequently, the connected miscellaneous

petition is closed. However, this Court grants permission to the revision petitioners/plaintiffs to file a reply statement to the Additional written

statement filed by the respondent/defendant and the trial Court shall take into consideration of the Additional written statement and the reply

statement and after going through the contents of the same shall also framed necessary issues that arise for rumination during the course of the trial

and in this regard the trial Court is directed to provide adequate opportunity to both the parties to file necessary documents and let in oral evidence

also if they so desire and advised. Since the suit is of the year 2000 and since the I.A. No. 126 of 2009 has been projected after a long lapse of

nine years and that too after commencement of the trial namely when PW1 has filed proof affidavit and he is to be cross examined this Court on

the basis of the Equity, Fairplay, Good conscience and even as a matter of prudence also directs the trial Court to dispose of the O.S. No. 333 of

2000 within a period of three months from the date of receipt of a copy of this order and the parties are directed to lend a helping hand to the trial

Court with regard to the completion of the proceedings the Trial Court is directed to submit a report of compliance to this Court without fail as to

the disposal of the Suit within the time granted.