

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Civil Revision Petition No.646 of 2014

Date: 04-12-2015

Between:

Mohsin Bin Sayeed

.... Petitioner

AND

Sayeed Bin Mubarak Amshan and another

.... Respondents

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Civil Revision Petition No.646 of 2014

ORDER:

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The 2nd defendant in O.S.No.1224 of 2010 is the petitioner herein. The said suit was filed by the 1st respondent herein on the file of Principal Senior Civil Judge's Court, Ranga Reddy seeking permanent injunction from interfering with peaceful possession and enjoyment of the plaint A and B schedule property admeasuring Ac.3.20 guntas in Survey No.156/ situated at Balapur village, Saroornagar Mandal, Ranga Reddy District.

2. The petitioner herein filed I.A.No.120 of 2011 in the said suit seeking amendment of the written statement. Originally, the written statement was filed by defendants 1 and 2. They filed the written statement stating that the 2nd

defendant divided the land admeasuring Ac.8.00 of land into individual plots and sold to various purchasers. He also stated that the balance of Ac.2.00 of land is covered by hillocks and the said balance extent of land is in possession of the 2nd defendant. Thus, the plaintiff has no right over the said Ac.8.00 of land. Now he sought an amendment of the said written statement stating that the said Ac.10.00 of land continued to be in his possession from the beginning to date and the statement made by the defendants in the earlier written statement that he sold away Ac.8.00 of land and retaining Ac.2.00 of land was not correct. The said application was resisted by stating that the 2nd defendant is seeking amendment of the entire written statement by way of deletions and additions. Ultimately, the petition for amendment of written statement was dismissed by order dated 08-11-2013, challenging which the above Civil Revision Petition is filed.

The said application was dismissed by the trial Court holding as follows:

“The objection raised by the 1st respondent /plaintiff is that the proposed amendment will take away the rights of the plaintiff in contesting the suit. As seen from the record in the written statement filed by the defendants 1 & 2 it was clearly mentioned in page no.7 that the 2nd defendant is the absolute owner of 10 acres of land in Sy.no.156/Vu but the same was sold away to various purchasers now the 2nd defendant is in having 2 acres of land with hill rocks. As the 2nd defendant already sold away 8 acres of land so also in page no.8 it was mentioned that the 2nd defendant is having 2 acres of land out of 10 acres. Now the proposed amendment is that the 2nd defendant is having 10 acres of land as on today hence the proposed amendment is totally inconsistent with the written statement in the written statement which was signed by the both the defendants clearly mention that the 2nd defendant sold away the remaining 8 acres now he is in possession of only 2 acres with hill rocks. As the present petition is filed to delete the words page no.7 20th line and in page no.8 para no.4 instead of 2 acres the proposed amendment that the 2nd defendant is having 10 acres of land hence the proposed amendment will take away the rights of the parties in contesting the suit. The counsel for the respondent cited **2010 (3) ALT 634** perused the entire citation, the preposition of law is very clear that amendment of the plaint and amendment of written statement are not in a same footing the general principal that the amendment of the pleadings cannot be allowed so as to alter materially or substitute cause of action or nature of the claim applies to the amendment of the plaint, in case of amendment of written statement addition of new ground of defence substituting or altering a defence or taking

inconsistent pleas in the written statement could not be objectionable for altering adding or substituting a new cause of action, in case of amendment of written statement in allowing the amendment the question of prejudice, does not arise. It is further discussed in the above citation in the proposed amendment amount to withdrawal of admission, the said application, moved by the defendant, the proposed amendment is allowed withdrawal of admission then great prejudice could be caused to plaintiff in advancing the case in such circumstance amendment of written statement cannot be permitted the above legal position is very clear, that proposed amendment is not only an inconsistent plea, but also withdrawal of the admission. In such circumstance amendment cannot be allowed. Hence there are no merits in the petition. Petition dismissed.”

3. Learned counsel for the petitioner/2nd defendant submits that in the joint written statement filed, the averments relating to the possession of the land was wrongly stated and he wants to amend the said written statement. The learned counsel for the respondents, on the other hand, stated that there can be an amendment of pleadings for raising alternative pleas but not inconsistent pleas.

4. The nature of the amendment sought for by the 2nd defendant is inconsistent with the earlier written statement filed by him along with the 1st defendant. In the original written statement, he stated that the land admeasuring Ac.8.00 of land in Survey No.156/ was sold away to different purchasers and the balance extent is hillock and is in possession of the 2nd defendant. The said written statement is sought to be amended by stating that the entire extent of Ac.10.00 of land is in his possession right from the date of purchase till the date of filing the petition seeking amendment. In support of his contention, the learned counsel for the petitioner relied on **Kalyani Gerdau Steels Ltd., v. Balireddygari Nagalakshamma and others** and **Sushil Kumar Jain v. Manoj Kumar and another**.

The Supreme Court in a recent decision in **Ram Niranjan Kajaria and others v. Sheo Prakash Kajaria and others** dealt with a case of amendment of written

statement in a partition suit. The Supreme Court was considering the issue with regard to the right of the defendant to seek withdrawal of the admission made by him in the written statement after long period. The Supreme Court rejected the application for amendment withdrawing the admissions, but gave opportunity to the defendants, who wanted amendment of the written statement to explain/clarify the admission made in the written statement. Accordingly, they were permitted to file an application within one month limiting their prayer only to the extent of explaining/clarifying the disputed admissions in the written statement and the trial Court was directed to consider it on merits in the light of the observations made by the Supreme Court.

In **Modi Spinning & Weaving Mills Co. Ltd., and another v. Ladha Ram & Co.**, the Supreme Court held that the defendant can raise inconsistent and alternative pleadings but cannot totally resile from the admissions made in the earlier written statement and hence disallowed the amendment. The other decision in **Gautam Sarup v. Leela Jetly and others** is also to the similar effect.

In view of the same, the order dated 08-11-2013 passed by the trial Court is perfectly valid. However, liberty is given to the 2nd defendant to seek appropriate permission from the Court, if the 2nd respondent wants to clarify/explain the admissions made in the earlier written statement and the trial Court shall consider the same in accordance with law without being influenced by the order passed by this Court in the present Revision Petition, but keeping in view the decided case on the point stated above.

The Civil Revision Petition is accordingly dismissed, subject to the above observation.

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RAMALINGESWARA RAO, J

Date: 04 -12-2015

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