

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.1226 of 2015

ORDER :

This Revision is filed under Article 227 of the Constitution of India challenging the order dt.09.02.2015 in I.A.No.791 of 2014 in O.S.No.48 of 2013 on the file of III Additional Senior Civil Judge, Kakinada.

2. The petitioner herein is the plaintiff in the above suit.
3. She filed the suit against respondents for a perpetual injunction restraining them from interfering with her peaceful possession and enjoyment of the plaint schedule property. She alleged that she obtained an oral lease from 1st defendant.
4. Written statement was filed by 1st defendant/1st petitioner admitting therein that there was an oral lease granted by him in respect of his half-share in the plaint schedule property to the respondent/plaintiff.
5. Subsequently, the petitioners sought to file additional written statement contending that the respondent/plaintiff is not a tenant of the plaint schedule premises; that there is no landlord and tenant relationship between the 1st petitioner and respondent; and that it was the mother of respondent who was the tenant.
6. The petitioners filed I.A.No.791 of 2014 under Order VIII Rule 9 C.P.C., requesting the Court to receive the additional written statement.

7. By order dt.09.02.2015, the Court below allowed the same. It held that in the written statement originally filed, the 1st petitioner had alleged that he is not the only owner of the plaint schedule property and that 2nd petitioner also purchased part of the schedule property; that the petition filed under Order VIII Rule 9 C.P.C. does not stipulate any limitation on the power of the court allowing parties to file subsequent pleadings; that although a party cannot be permitted to go beyond the pleadings, if circumstances warrant, such a party is entitled to take pleas which are suitable to his defence; that the trial in the suit had not yet commenced; that the documents filed by petitioners show the name of the mother of respondent as the tenant and this fact was inadvertently not stated in the pleading; and that a party is justified in seeking amendment on that count.
8. Challenging the same, this Revision is filed.
9. Heard Sri S. Subba Reddy, counsel for petitioner; and Sri B.S. Kartik and Prasad, counsel for respondents.
10. The counsel for petitioner contended that in view of Order 6 Rule 7 C.P.C., an additional written statement taking a plea inconsistent with the original written statement cannot be permitted; and that the Court below erred in focusing only on Order 8 Rule 9 C.P.C. and has ignored Order 6 Rule 7 C.P.C.
11. On the other hand, the counsel for respondents refuted the above contentions and stated that the court below had rightly allowed the respondents to file an additional written statement, since there was an inadvertent error in the original written statement, and the documents filed by respondents establish

that it was not the petitioner but her mother, who was the tenant.

12. I have noted the submissions of both sides.
13. In the original written statement filed by respondents, they had pleaded that it was the petitioner who was the tenant of 1st respondent. In the additional written statement, which is now sought to be filed by respondents, they pleaded that the petitioner is not the tenant, but the petitioner's mother is the tenant. Therefore, the plea in the additional written statement is inconsistent with the plea in the original written statement.
14. Order 6 Rule 7 C.P.C. states that no pleading shall, except by way of amendment, raise any new ground of claim or contain any allegation of fact inconsistent with the previous pleadings of the party pleading the same. Therefore, while considering the application under Order 8 Rule 9 C.P.C., it was incumbent on the Court below to also consider Order 6 Rule 7 C.P.C. Admittedly, it had not done so.
15. In this view of the matter, the order passed by the Court below cannot be sustained, since it has over-looked Order 6 Rule 7 C.P.C. and also the fact that the plea sought to be raised in the additional written statement is inconsistent with the plea raised in the original written statement by respondents.
16. Therefore, the Revision is allowed and the order dt.09.02.2015 in I.A.No.791 of 2014 in O.S.No.48 of 2013 on the file of III Additional Senior Civil Judge, Kakinada, is set aside. No order as to costs.
17. Miscellaneous applications, pending if any in this Revision, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 10-07-2015

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