

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.No.4875 OF 2014

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.24.09.2014 in I.A.No.73 of 2012 in O.S.No.83 of 2010 of the III Additional District Judge, Bhimavaram.

2. The petitioner herein is plaintiff in the suit. He filed the said suit for specific performance of an agreement of sale dt.14.12.2007 executed by the respondents in his favour. Written statement was filed by the 1st respondent admitting the execution of sale agreement and also receipt of part of the consideration thereunder.

3. Thereafter, I.A.No.73 of 2012 was filed by the respondents 1 to 3 seeking to file an additional written statement invoking Order 8 Rule 9 CPC.

4. In the affidavit filed in support of the said application, it is stated that the respondents were under the impression that the dispute would be settled amicably and there would not be any necessity to file a written statement, but later at the instance of his advocate, instructions were given to prepare written statement; it was prepared in their absence and filed into the Court; and that the respondents 1 to 3 could not peruse the entire contents of the earlier written statement at the time when it was filed into Court. It was further stated that on going through the contents of the written statement, in December 2011, it was discovered that certain facts were not included in the initial written statement and, therefore, permission be accorded to file additional written statement.

5. In the additional written statement, a new plea inconsistent with the initial written statement was raised by respondents 1 to 3

contending that a sale agreement dt.19.04.2007 was obtained by the father of the petitioner from the 1st respondent and a sum of Rs.34,00,000/- was paid by the father of the petitioner to the 1st respondent in installments. It was further contended that the father of the petitioner died in November, 2007 and that subsequently the suit agreement dt.14.12.2007 was got prepared by the petitioner reducing the sale consideration, no amount was paid by the petitioner under this agreement of sale, and the amount paid earlier by the petitioner's father was treated as advance under this agreement of sale.

6. Counter-affidavit was filed by the petitioner opposing the grant of leave to the respondents 1 to 3 to file the additional written statement. He contended that pleas raised in the additional written statement are contradicting those raised in the initial written statement and this cannot be permitted.

7. By the impugned order dt.24.09.2014, the Court below allowed the I.A.No.73 of 2012 stating that it had heard the matter, verified the record and allowed the petition. The said order is totally bereft of any reasons.

8. That apart the Court below has not noticed Order 6 Rule 7 CPC, which prohibits, except by way of an amendment, a new pleading raising a new ground of claim or any allegation of fact inconsistent with the previous pleadings of the party pleading the same.

7. In view of Order 6 Rule 7 CPC, it is not open to the respondents 1 to 3 to seek to file additional written statement taking pleas inconsistent with the original written statement filed by them. Therefore, the Court below ought not to have allowed the respondents to file additional written statement.

8. For the aforesaid reasons, the Civil Revision Petition is allowed

and the Order dt.24.09.2014 in I.A.No.73 of 2012 in O.S.No.83 of 2010 of the III Additional District Judge, Bhimavaram is set aside. There shall be no order as to costs.

9. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

M.S.RAMACHANDRA RAO, J

01st July, 2015.

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