

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

C.R.P. No.1101 of 2015

ORDER :

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.14.11.2014 in I.A.No.1043 of 2014 in O.S.No.172 of 2009 of I Additional Junior Civil Judge, Rajahmundry refusing permission to the petitioners/defendants for filing an additional written statement.

2. The respondent/plaintiff filed the above suit for eviction of the petitioners from the plaint schedule property claiming ownership thereof.

3. Written statement was filed by the 2nd petitioner claiming that the respondent/plaintiff had sold away the plaint schedule property to him under an agreement of sale dt.30.07.1989 but the respondent had not executed any registered sale deed and was postponing the same on one pretext or the other.

4. Subsequently, I.A.No.1043 of 2014 was filed by the petitioners stating that they reliably learnt that the suit property does not belong to the respondent; that after cross-examination of PW1, many persons bearing the surname of the respondent had approached them claiming title over the plaint schedule property, denying the right of the respondent in respect of the plaint schedule property; and they also agreed to register the plaint schedule property in favour of the petitioners. Therefore, additional written statement, wherein this plea was taken by petitioners, may be received by the Court below under Order 8 Rule 9 CPC.

5. This application was opposed by the respondent/plaintiff contending that he had never sold the plaint schedule property to the 2nd petitioner. He asserted that he is the absolute owner of the plaint schedule property. He further contended that the pleading in the

additional written statement is entirely different from the pleading in the original written statement and the petitioners are estopped from denying his title. He further contended that once the petitioners had admitted his title, they are estopped from denying it and therefore, the additional written statement cannot be received.

6. By order dt.14.11.2014, the Court below rejected the said application. It held that after commencement of trial, the application to receive additional written statement cannot be allowed, unless the petitioners show that in spite of due diligence, they could not raise this matter before the commencement of trial. It held that the plea which the petitioners seek to raise in the additional written statement is inconsistent with their earlier pleading and it cannot be permitted.

7. Challenging the said order, this Revision is filed.

8. Counsel for the petitioners contended that only after the trial commenced, the petitioners came to know that the respondent did not have title to the property and therefore the Court below ought to have permitted the petitioners to file an additional written statement. He also contended that the plea of the petitioner in the additional written statement is not inconsistent with the plea taken in the original written statement and therefore, the Court below erred in dismissing the I.A.No.1043 of 2014.

9. In the original written statement, the petitioners have pleaded that the respondent had sold the property to them under an agreement of sale but had not executed a registered sale deed in their favor. Thus they impliedly admitted the title of the plaintiff. In the additional written statement, petitioners are taking a plea that the respondent is not the owner of the property at all. This plea is clearly inconsistent with the plea in the original written statement.

10. Order VI Rule 7 CPC states that no pleading shall, except by

way of amendment, raise any ground or contain allegation of fact inconsistent with the previous pleading of the party pleading the same. In view of this the petitioners, having already filed a written statement, cannot be permitted to file an additional written statement taking a plea inconsistent with the original written statement.

11. Therefore, I am of the opinion that the Court below is right in dismissing the I.A.No.1043 of 2014.

12. Accordingly, this Civil Revision Petition is dismissed. There shall be no order as to costs.

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

M.S.RAMACHANDRA RAO, J

08th July, 2014
gra