

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:08.12.2016

Coram

The Hon'ble Mr. Justice **S.M.SUBRAMANIAM**

C.R.P.(PD) No.214 of 2014 &
M.P.No.1 of 2014

K.Sheela Rani

.. Petitioner

Vs

1.Nayagam
2.Lilli Alias Lilli Pushpa
3.Menaka
4.Suguna alias Sugunasekari
5.Prabu
6.Suresh alias Sureshbabu
7.Rameshbabu
8.Illayakumari
9.Selvi alias Thamaraiselvi
10.Sunkma [died]
 Padma
11.Jayakodi
12.Chinnadurai
13.Selvi
14.Makeshwari
15.Monokaran
16.Manjula
17.Kumar
18.Chandiran

.. Respondents

Prayer :- Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decree dated 09.10.2013, made in I.A.No.564/2013 in O.S.No.321/2000, on the file of the Sub Court, Vellore.

For petitioner .. Mr.A.Gouthaman

ORDER

The present Civil Revision Petition has been filed challenging the order passed in I.A.No.564 of 2011 in O.S.No.321 of 2000, by the learned Subordinate Judge, Vellore, in and by which the learned trial Judge rejected the permission sought for by the petitioner/second defendant for filing Additional Written Statement in O.S.No.321 of 2000.

2.The petitioner herein is the second defendant in the Suit, the respondents 1 to 8 are the Plaintiffs and the respondents 9 to 19 are defendants 3 to 13.

3.The learned counsel appearing for the petitioner submitted that the plaintiffs have filed a Suit in O.S.No.321 of 2000, for Partition and for permanent injunction, the Written Statement was filed on 20.09.2004 and the trial commenced. Further, examination of P.W.1 was over and the cross examination was also concluded. When the Suit was posted for the examination of the defence side evidence, the

petitioner herein/2nd defendant, filed an Interlocutory Application in I.A.No.564 of 2013, seeking permission to file additional written statement in the Suit and the same was rejected by the trial Court on the ground that the trial has already commenced and therefore, the second defendant cannot be allowed to file additional written statement.

4.The learned counsel for the petitioner contended that in the original written statement, the petitioner/2nd defendant had committed certain mistakes. In paragraph No.3 of the affidavit filed in I.A.No.564 of 2013, the petitioner has stated that the marriage between her and one Mr.Kumar was solemnized in the year 1991 and out of the wedlock, three children born namely Naveen Kumar, K.Kishore Kumar and K.Ishwarya. One Tmt.Gangamma is her mother-in-law. When the Suit for partition was filed by the plaintiffs 1 to 8 in the year 2000, owing to persistence of her mother-in-law/Tmt.Gangamma, she was compelled to take an incorrect defence as pleaded in paragraph Nos. 4 & 5 of the written statement.

5.The petitioner in her sworn affidavit had categorically admitted that she was compelled to take an incorrect defence and now she

wants to rectify the same by way of filing additional written statement. Further, it was admitted by the petitioner that she had filed a false statement in the written statement on compulsion. Therefore, she wants to file an additional written statement to rectify the error.

6. Such a contention cannot be admitted and the trial Court also rightly dismissed the Interlocutory Application on the ground that trial had already commenced and the witnesses were examined on the part of the plaintiffs. The Court has a reasonable apprehension that on hearing of the deposition of the plaintiffs side evidence, now the petitioner/2nd defendant has come out with an Application, seeking permission to file additional written statement.

7. At this juncture, the learned counsel for the petitioner referred to the Judgment of this Court in the case of *MUTHUSAMY v. THANGARAJ* [2005(5) CTC 785]. The learned Judge while dealing with the filing of additional written statement, has laid down as follows:

“8. True, as seen from the additional written statement, some new pleas have also been taken. Whether this new plea will prevent the plaintiff from succeeding in the case is a matter to be decided at the time of trial, not at the time of receiving the statement. Therefore, the additional written statement, wherein an attempt is made to explain the original statement, giving further

particulars, cannot be labelled as entirely a new one, disowning the original case. In this context, we have to see the relevant provisions, namely Order 8, Rule 9, C.P.C. Order 8, Rule 9, C.P.C. reads:

"No pleading subsequent to the written statement of a defendant other than by way of defence to set-off or counter-claim shall be presented except by the leave of the Court and upon such terms as the Court thinks fit; but the Court may at any time require a written statement or additional written statement from any of the parties and fix a time of not more than thirty days for presenting the same."

It does not say that no application for receiving the additional statement shall be allowed, after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial, as provided under Order 6, Rule 17, C.P.C. proviso. The legislators when amended the C.P.C. thought it fit not to allow the party to have amendment, as a matter of right, that too in a case where they had an opportunity to raise the same, at the time of filing the pleadings. But, when they come to Order 8, C.P.C., no such restriction has been imposed, thereby giving discretion to the Court concerned to allow the subsequent pleadings, for which it is not necessary whether that defence was available on the date of filing of the original written statement or not. Under Order 8, Rule 9, C.P.C., power is given to the Court to call for the written statement or additional written statement from any party, fixing time, not exceeding 30 days, thereby showing the provisions of Order 8, Rule 9, C.P.C. is liberal in its application, giving wide discretion to the Court, probably to give a chance to the parties, to agitate their right even raising subsequent pleas, for which, the Court should

not be rigid. The Courts should exercise their discretion liberally, when it will not affect the right of the party. “

8.The learned counsel also referred to the decision of the Hon'ble Supreme Court in *BALDEV SINGH AND OTHERS v. MANOHAR SINGH AND ANOTHER* [(2006) 6 SCC 498, and relied on paragraph Nos. 15 & 16, which reads as follows:

“15.Let us now take up the last ground on which the application for amendment of the written statement was rejected by the High Court as well as the Trial Court. The rejection was made on the ground that inconsistent plea cannot be allowed to be taken. We are unable to appreciate the ground of rejection made by the High Court as well as the Trial Court. After going through the pleadings and also the statements made in the application for amendment of the written statement, we fail to understand how inconsistent plea could be said to have been taken by the appellants in their application for amendment of the written statement, excepting the plea taken by the appellants in the application for amendment of written statement regarding the joint ownership of the suit property. Accordingly, on facts, we are not satisfied that the application for amendment of the written statement could be rejected also on this ground. That apart, it is now well settled that an amendment of a plaint and amendment of a written statement are not necessarily governed by exactly the same principle. It is true that some general principles are certainly common to both, but the rules that the plaintiff cannot be allowed to

amend his pleadings so as to alter materially or substitute his cause of action or the nature of his claim has necessarily no counterpart in the law relating to amendment of the written statement. Adding a new ground of defence or substituting or altering a defence does not raise the same problem as adding, altering or substituting a new cause of action. Accordingly, in the case of amendment of written statement, the courts are inclined to be more liberal in allowing amendment of the written statement than of plaint and question of prejudice is less likely to operate with same rigour in the former than in the latter case.

16.This being the position, we are therefore of the view that inconsistent pleas can be raised by defendants in the written statement although the same may not be permissible in the case of plaint. In the case of *M/s. Modi Spinning and Weaving Mills Co.Ltd. & Anr. Vs. M/s. Ladha Ram & Co.* [(1976) 4 SCC 320], this principle has been enunciated by this Court in which it has been clearly laid down that inconsistent or alternative pleas can be made in the written statement. Accordingly, the High Court and the Trial Court had gone wrong in holding that defendants/appellants are not allowed to take inconsistent pleas in their defence.”

9.The learned counsel further relied upon one more decision of this Court in the case of *THIYAGARAJAN v. MANIVANNAN* [2007-1-L.W.429] and relied on paragraph Nos.14 to 18, which reads as follows:

14. In the above decision, this court held that when the person seeking leave is not attempting to plead a different case than what has been pleaded in the original written statement, the leave can be granted to file additional written statement.

15. In 2003-2 L.W. 395 (cited supra), this court held that Order 8 Rule 9 C.P.C. enables the court to accept a written statement filed at a later stage, even after settlement of issues, upon such terms as it may think fit and proper.

16. In 2005(5) CTC 785 (cited supra), this court held as follows:-

"8.True, as seen from the additional written statement, some new pleas have also been taken. Whether this new plea will prevent the plaintiff from succeeding in the case is a matter to be decided at the time of trial, not at the time of receiving the statement. Therefore, the additional written statement wherein an attempt is made to explain the original statement, giving further particulars, cannot be labelled as entirely a new one, disowning the original case. In this context, we have to see the relevant provisions, namely Order 8, Rule 9, C.P.C. Order 8, Rule 9, C.P.C. reads:

"No pleading subsequent to the written statement of a defendant other than by way of defence to set-off or counter-claims shall be presented except by the leave of the Court and upon such terms as the Court thinks fit; but the court may at any time require a written statement or additional written statement from any of the parties and fix a time of not more than thirty days for presenting the same."

It does not say that no application for receiving the additional statement shall be allowed, after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial, as provided under Order 6, Rule 17, C.P.C. proviso. The legislators when amended the C.P.C. thought it fit not to allow the party to have amendment, as a matter of right, that too in a case where they had an opportunity to raise the same, at the time of filing the pleading. But, when they come to Order 8, C.P.C., no such restriction has been imposed, thereby giving discretion to the Court concerned to allow the subsequent pleadings, for which it is not necessary whether that defence was available on the date of filing of the original written statement or not. Under Order 8, Rule 9, C.P.C., power is given to the Court to call for the written statement or additional written statement from any party, fixing time, not exceeding 30 days, thereby showing the provisions of Order 8, Rule 9, C.P.C. is liberal in its application, giving wide discretion to the Court, probably to give a chance to the parties, to agitate their right even raising subsequent

pleas, for which, the Court should not be rigid. The Courts should exercise their discretion liberally, when it will not affect the right of the party.

9. In this case, the only grievance, if at all for the revision petitioner, as urged before me, must be that when P.W.1 was in the box, that too pending cross examination, subsequent pleadings should not be allowed. By allowing the subsequent pleadings, the right of the plaintiff is not going to be affected and it is for the defendant to prove the subsequent pleadings by letting in evidence, since in the original written statement, he has opposed the claim of plaintiff. The plaintiff can also re-examine P.W.1, if he desires, with the permission of the Court, even to deny the allegations in the written statement. Thus, it is seen, ample opportunity is available to P.W.1, to deny or accept the case projected in the additional written statement, which would go to show, no prejudice would be caused to the plaintiff, though the suit is a part heard one. Order 8, Rule 9, C.P.C. does not say, after commencement of trial, no subsequent pleading shall be entertained by the Court, as said in Order 6, Rule 17, C.P.C. proviso."

17. In the above decision, this court held that Order 8, Rule 9 C.P.C. does not say that no application for receiving the additional written statement should be allowed after the trial has commenced and Under Order 8, Rule 9 C.P.C., wide discretion is given to the court to give a chance to the parties to agitate their rights even raising subsequent plea for which the court should not be rigid and the court should exercise their discretion liberally when it does not affect the rights of the parties.

18. If the law laid down by this court in the above decisions is applied to the facts of the present case, I may have to necessarily hold that the trial court is wrong in rejecting I.A.No.247/2004 filed under Order 8, Rule 9 C.P.C."

The Judgments cited by the learned counsel for the petitioner has no direct application on the facts and circumstances on hand, since in the present case, the trial has already commenced and the examination of P.W.1 was over and further cross examination of P.W.1 was also concluded. Therefore, this Court is not inclined to consider the present

Civil Revision Petition.

10. In the present case on hand, it is very clear that the original written statement was filed on 20.09.2014 and the second defendant waited for about four years and allowed the plaintiffs to examine the witnesses and after cross examination of the plaintiffs side witnesses, preferred to file an Application, seeking permission to file an additional written statement before the trial Court.

11. On a perusal of the submissions made out in the additional written statement, this Court is of the view that the petitioner is willing to change his original contentions, which is not permissible, more specifically after the commencement of the trial. Such being the facts and circumstances of the case, this Court is not inclined to consider the present Revision Petition.

12. Accordingly, the Civil Revision Petition is devoid of merits and the same is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

08.12.2016

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To

1.The learned Judge,
Sub Court, Vellore.

S.M.SUBRAMANIAM, J.
Rpa

C.R.P.(PD) No.214 of 2014

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