

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05-01-2016

(Orders reserved on 16.12.2015)

CORAM:

THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

C.R.P.No.892 of 2013
& M.P.No.1 of 2013

1. Minor Mahema
2. Minor Manisha

Both Minors represented by
their mother G.Kalaivani ... Petitioners

Vs.

1. J.Suganth
2. J.Ragunadhan

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and final order, dated 18.01.2013 in I.A.No.45 of 2013 in O.S.No.29 of 2011 on the file of the First Additional District Court, Erode.

For petitioners : Mr.V.P.Sengottuvel
For respondents : Mr.N.Manokaran

ORDER

This Civil Revision Petition is filed against the order dated 18.01.2013 in I.A.No.45 of 2013 in O.S.No.29 of 2011 passed by the learned First Additional District Judge, Erode, in and by which, the application filed by the respondents/defendants 2 and 3 to permit them to file the additional written statement, was allowed.

2. Learned counsel for the revision petitioners/plaintiffs contended that the respondents/defendants 2 and 3 in O.S.No.29 of 2011, belatedly sought permission to file additional written statement regarding the Will introduced by the revision petitioners/plaintiffs. The trial Court, without properly considering the merits of the case, allowed the application seeking permission to file additional written statement, which

is erroneous and he prayed that the Civil Revision Petition may be allowed. In support of his submissions, learned counsel for the revision petitioners/plaintiffs relied on the following decisions of this Court:

(a) 2008 (3) LW 529 (Madurai Bench) (R.Vino @ Vincentza and another Vs. Maria Grace Benefit Fund Ltd):

"6. If really the Petitioners/Defendants thought that as per Clause 96 and 100, the Managing Director is not competent to represent the plaintiff-Benefit Fund, the defendants could have very well raised the point in the written statement already filed by them. But that was not to be so."

(b) 2010 (1) CTC 93 (Sekar Vs. A.N.Sengodagounder):

"6. In the case of Sushil Kumar Jain Vs. Manoj Kumar and another, AIR 2009 SC 2544, the Supreme Court considered the scope of amendment of pleadings under Order 6, Rule 17 and held as follows:

"10. At this stage, we may remind ourselves that law 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. Adding a new ground of defence or substituting or altering a defence does not raise the same problem as adding, altering, substituting a new cause of action. See Baldevl Singh & others Vs. Manohar Singh and another, AIR 2006 SC 2832."

(c) 2010 (1) MWN (Civil) 750 (Marie Louise Vs. Marie Bernadette):

"13. Per contra, the learned Senior counsel for the Plaintiff/respondent would specifically argue that at the first instance, in the Plaint, it was specifically averred that the Will executed by the mother was duly cancelled and this averment in the plaint was not at all denied in the written statement. If there is no specific denial, as per Order 8, Rule 5 of CPC, it tantamounts to an admission and the principle, without a plea no amount of evidence is permissible, will come into play. Therefore, when the Will has been cancelled as per law, the provisions of French Code automatically applies to the case on hand, where, after the demise of the mother, whatever property the mother inherited from her husband would devolve upon plaintiff and defendant, because the mother holds the property only as a life estate

holder. Therefore, after the death of the mother, the property would automatically falls to the share of the plaintiff and defendant. In this connection, the learned Senior Counsel for the respondent/plaintiff relied on the decision reported in S.Sadagopa Ramanujam Vs. S.R.Rengasamy Iyengar & 2 others, 1995 (I) CTC 547, wherein a Division Bench of this Court held that a denial should be specific, clear and unambiguous. In the absence of any specific denial, on the part of one of the parties, the suit has to be decreed or dismissed as the case may be in accordance with the admission made by the parties. If there is no specific denial in the written statement, it will amount to admission of the case put forward by the plaintiff in the plaint. Therefore, a general denial is not sufficient."

3. Learned counsel for the respondents/D2 and D3 contended that the trial Court has properly appreciated the facts and rightly allowed the application seeking permission to file additional written statement and hence, he prayed that the Civil Revision Petition may be dismissed. In support of his submissions, learned counsel for the respondents/D2 and D3 relied on the following decisions:

(a) 2001 (8) SCC 115 (Dondapati Narayana Reddy Vs. Duggireddy Venkatanarayana Reddy):

"9. Rules governing pleadings and leading of evidence have been incorporated to advance the interests of justice and to avoid multiplicity of litigation. If the claim of plaintiff Dondapati Narayana Reddy is based upon the Will dated 20.8.1994 executed by Donapati Tirumala Ramareddy, the defendant-appellant has a right to seek the amendment of his written statement incorporating the plea sought to be introduced by way of proposed amendment. Such a prayer cannot be denied on hypertechnical grounds. The amendment should, generally, be allowed unless it is shown that permitting the amendment would be unjust and results in prejudice against the opposite side which cannot be compensated by costs or would deprive him of a right which has accrued to him with the lapse of time. Amendment may also be refused, if such a prayer made separately, is shown to be barred by time. Neither the trial court nor the High Court has found the existence of any of the circumstances justifying the rejection of the prayer for amendment of the written statement. Whether or not the amendment is allowed, the trial court is otherwise obliged to decide the validity of the disputed Will which is the

basis of the suit filed by the plaintiff. We are of the opinion that the courts below were not justified in rejecting the prayer of the defendant seeking amendment of his written statement.

10. In view of the fact that the validity of the Will was sought to be challenged by way of amendment, the plaintiff acquired a right to lead evidence to prove its authenticity. Otherwise also when the basis of the suit was the Will dated 20.8.1994, the interests of justice demanded that the plaintiff should have been allowed an opportunity to lead additional evidence to prove its validity. The High Court appears to have adopted a very rigid and technical approach in rejecting the prayer of the plaintiff to lead additional evidence to prove testamentary succession by producing registered Will dated 20.8.1994 executed by Donapati Tirumala Ramareddy."

(b) 2007 (1) LW 429 (Madras High Court) (Thiyagarajan Vs. Manivannan):

"9. Order 8 Rule 9 of C.P.C. permits the defendant to file subsequent pleadings after getting leave of the court. Further, for better appreciation, order 8 Rule 9 of C.P.C. is extracted below:-

"9. Subsequent pleadings:- 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."

... ..

11. In 1999 (3) CTC 52 = 1999 (3) LW 458 (Subramanian Vs. Jayaraman) (cited supra), this court held as follows:-

"9. It is not the intention of the legislature that no pleading subsequent to the written statement should be allowed other than for reasons given therein. But the intention is that without the leave of the Court, no pleading subsequent to the written statement shall be presented. Hence, it goes without saying that the

subsequent statement or additional statement could be filed only with the leave of the Court on such terms, as the Court thinks fit. The approach of Law in permitting the court to grant leave in such cases is positive. But, the Court while granting the leave could direct the petitioner to comply with certain terms that the Court thinks fit and hence absolutely there is no impediment or hurdle or legal barrier put-forth by the Rule in allowing any additional statement subsequent to the written statement and the only shot provided in the arms of the court for granting leave is that it could allow the application on such terms as it thinks fit. The same power could also be suo motu exercised by the Court as per the concluding part of the Rule. The Rule has been liberally construed so far as the Court granting the leave to present such additional statements and discretion is given to the Court either to allow or to reject and while allowing it could do the same on such terms as the court thinks fit. Therefore, it could be safely concluded that in all such cases, wherein the defendant approaches the court with an application under Order 8 Rule 9 of the Civil Procedure Code praying to grant leave, Courts are expected to be liberal in granting the leave but of course on terms as the Court thinks fit in the circumstances of the individual case."

... ..

17. In the above decision (2005 (5) CTC 785 - Muthusamy Vs.Thangaraj), 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.

. . . .

20. The trial court is also wrong in holding that a new case has been set up by the petitioner/defendant in the additional written statement. I have already referred to the averments contained in both the original and additional written statements. A reading

of these two statements would make it very clear that the averment in the additional written statement is also in line with the original written statement, of course with some inconsistencies. But that does not mean that a totally new case has been put forward by the petitioner/defendant. Courts should be very liberal in granting relief under Order 8 Rule 9 C.P.C. as wide discretion has been given to the courts to adjudicate the matter including subsequent pleadings completely and finally. Of course the discretion is to be exercised on terms considering the facts and circumstances of the individual cases. The trial court, in this case, has unfortunately rigid in being unreasonable in throwing out the application on technicalities."

(c) 2009 (15) SCC 528 (Olympic Industries Vs. Mulla Hussainy Bhai Mulla Akberally):

"14. In our view, even by filing an amendment or additional counter-statement, it is open to the appellant to add a new ground of defence or substituting or altering the defence or even taking inconsistent pleas in the counter-statement as long as the pleadings do not result in causing grave injustice and irretrievable prejudice to plaintiff or displacing him completely. (See: Usha Balasaheb Swami & Ors. Vs. Kiran Appaso Swami. (2007) 5 SCC 602 - SCC p.612, para 27). Therefore, we are unable to agree with the High Court on this ground as well.

15. It is also well settled that the courts should be more generous in allowing the amendment of the counter-statement of the defendant than in the case of plaintiff. The High Court in its impugned order has also observed that in order to file an additional counter-statement, it would be open to the defendant to take inconsistent plea. The prayer for acceptance of the additional counter-statement was rejected by the High Court on the ground that while allowing such additional counter-statement to be accepted, it has to be seen whether it was expedient with reference to the circumstances of the case to permit such a plea being put forward at that stage.

16. As noted hereinafter, the only ground on which the High Court had rejected the acceptance of the additional counter-statement was (i) by filing of such additional counter-statement, the appellant was introducing a new case; and (ii) the entire trial was to be reopened causing great prejudice to the

respondents whose examination was completed. It was also observed by the High Court that the appellant cannot be able (sic allowed) to take such inconsistent plea by filing additional counter-statement after cross-examination of the appellant. In our view, the High Court was in error in interfering with the concurrent orders of the Rent Control Tribunal, as from the fact stated we find that no prejudice was caused to the respondents and even if some prejudice was caused that could be compensated by costs.

17. As noted herein earlier, the appellant had already stated in his application for acceptance of additional counter-statement the reasons for taking such new plea, viz., he could trace out the lease deed pertaining to the lease only when he was cleaning the boxes. The respondents have also not disputed as to the existence of the lease deed, only they are disputing the filing of the additional counter-statement at such a belated stage. This being the position, we are of the view that even if the examination of PW-1 or his cross-examination was over, then also, it was open to the court to accept the additional counter-statement filed by the appellant by awarding some costs against the appellant.

18. It is also well settled that while allowing additional counter-statement or refusing to accept the same, the court should only see that if such additional counter-statement is not accepted, the real controversy between the parties could not be decided. As noted herein earlier, by filing an additional counter statement in the present case, in our view, would not cause injustice or prejudice to the respondents but that would help the court to decide the real controversy between the parties. In our view, the High Court was, therefore, not justified in rejecting the application for permission to file additional counter-statement as no prejudice could be caused to the respondent which would otherwise be compensated in terms of costs."

4. Heard the learned counsel appearing for the parties and perused the materials available on record.

5. Admittedly, the revision petitioners herein filed suit in O.S.No.29 of 2011 (since transferred from the file of the District Munsif Court, Erode in O.S.No.448 of 2009) for permanent injunction restraining the defendants from creating

any unlawful encumbrances over the suit properties and also from trespassing into any portion of the suit properties and from forcibly collecting the monthly rents from the tenants occupying the suit properties. The respondents herein have also filed a suit in O.S.No.279 of 2009 for dividing the suit properties into two equal shares by metes and bounds and allot one such share to them and put them in possession of the same. In the written statement filed in O.S.No.279 of 2009, the revision petitioners herein, who are the defendants 2 and 3 therein, alleged that there is a Will executed by Lakshmanan on 21.03.2007 while he was in a sound and disposing state of mind, bequeathing his entire properties described in the plaint schedule therein to his two minor grand-daughters (revision petitioners herein), represented by their guardian mother Kalaivani. It is further alleged that Lakshmi, wife of Lakshmanan, executed a registered Will, dated 17.01.1996 while she was in a sound and disposing state of mind, bequeathing her entire immovables described fully in 'A' schedule of the Will, in favour of her only son Gopalakrishnan and on the demise of the said Lakshmi, her son Gopalakrishnan got the entire 'A' schedule properties in the Will and after his demise, the defendants 1 to 3 being his only legal representatives, succeeded to all the properties left behind by Gopalakrishnan. It is seen that they have not enclosed the alleged Will, dated 17.01.1996, along with the written statement. Admittedly, joint trial is being conducted in both the suits and common evidence is being recorded. Even though the written statement is filed, the revision petitioners/plaintiffs have produced the alleged original Will only on 27.11.2012, at the time of examination of witnesses. Immediately after showing the Will, the respondents herein (D2 and D3) filed application on 03.01.2013 seeking permission to file the additional written statement, which was allowed by the trial Court. Since the revision petitioners, who are the defendants 2 and 3 in O.S.No.279 of 2009, have produced the original Will before the Court, the defendants in O.S.No.29 of 2011 have every right to peruse the original Will and have a right to file additional written statement. Since they have filed the additional written statement after the Will was produced, the argument of the learned counsel for the revision petitioners that the additional written statement is filed at the belated stage, is not at all acceptable.

6. In view of the above facts and circumstances of the case and on applying the decisions cited by learned counsel appearing for both parties, to the facts of the present case, this Court finds that there is no illegality or infirmity in the impugned order passed by the trial Court and the same does not warrant any interference by this Court. The Civil Revision Petition is liable to be dismissed and accordingly, the Civil Revision

Petition is dismissed. No costs. The Miscellaneous Petition is closed.

sd/-
Assistant Registrar

/TRUE COPY/

Sub-Assistant Registrar

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Copy to

1. The First Additional District Judge, Erode.
2. The Record Keeper, V.R. Section, High Court, Madras.

+1 CC to MR.V.P.Sengottuvel Advocate. SR.NO. 717

+1 CC to MR.N.Manokaran Advocate. SR.NO. 541

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