

The Hon'ble Sri Justice C.V.Nagarjuna Reddy

Civil Revision Petition No.4642 of 2016

Date: 30.09.2016

Between:

Nakka Narayanaswamy and another

.. Petitioners

and

K.Jagan Mohini and 5 others

.. Respondents

Counsel for the petitioner : Mr.G.Rama Gopal

Counsel for respondent No.1: Mr. Nooka Jagannadham

The Court made the following:



Order:

This Civil Revision Petition arises out of Order, dated 18.07.2016, in IA.No.179 of 2016 in OS.No.273 of 2011, on the file of the VI Additional District Judge, Visakhapatnam.

We have heard Mr.G.Rama Gopal, learned Counsel for the petitioners/defendant Nos.1 and 2, and Mr.Nooka Jagannadham, learned Counsel for respondent No.1/plaintiff No.1.

For convenience, the parties shall be hereinafter referred to as arrayed in the suit.

Plaintiffs filed the afore-mentioned suit for declaration of title and for consequential relief of vacant possession. The defendants, who are the father and son respectively, filed a written statement wherein it was *inter alia* averred that defendant No.1, who was the Deputy Superintendent of Police, got assignment of the suit schedule property made in the name of late Lakshmana Rao, who is the husband of plaintiff No.1 and worked as a driver, and that being *benami*, he is not the *de jure* title holder and consequentially, no rights have devolved upon the plaintiffs.

After the evidence on the plaintiffs' side was closed, the defendants filed the afore-mentioned IA for filing additional written statement on 18-02-2016 wherein they have raised a completely new plea that one late Nakka Chandra Kalavathamma has executed a will, dated 08-05-2002, in favour of defendant Nos.2 and 3.

It is further averred in the affidavit filed by defendant No.2 that after the will has come to his knowledge, he has advised his father to get the additional written statement filed by incorporating the said facts, but defendant No.1, being aged 93 years, could not get the additional written statement prepared and that in view of defendant No.2's as well as his own ill health, they could not pursue the preparation and filing of the additional written statement.

Upon considering the respective pleas of the parties, the lower Court has dismissed the application mainly on the ground that as the plaintiffs' evidence was already closed, if the defendants are permitted to file an additional written statement taking completely a new plea, the valuable rights accrued to the plaintiffs through the pleadings of the defendants would be lost.

In my opinion, the lower Court has assigned a cogent reason for rejecting the application filed by the defendants for filing additional written statement. Under Order VIII Rule 9 of the Code of Civil Procedure, 1908 (CPC), 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.

Though the power to permit filing of an additional written statement is vested in the Court by the afore-mentioned provision, such a power needs to be exercised discreetly and if filing of additional written statement affects the case of the plaintiff and the loss that may be caused by filing the same cannot be compensated by costs, the Court shall not permit such filing. As rightly observed by the lower Court, if the defendants are permitted to file additional written statement by taking a new plea after the evidence on the plaintiffs' side is closed, it takes away the valuable advantage accrued to the plaintiffs, which cannot be compensated by imposing costs. The explanation offered by defendant No.2 *viz.*, that the old age of defendant No.1 and his own ill health is not convincing and does not constitute sufficient reason for the Court to

permit filing of additional written statement belatedly and that too, after closure of the evidence of the plaintiffs.

For the afore-mentioned reasons, I do not find any illegality or jurisdictional error in the order of the lower Court in dismissing the IA filed by the defendants for permission to file additional written statement.

The Civil Revision Petition is, accordingly, dismissed.

As a sequel to dismissal of the Civil Revision Petition, CRPMP.No.6036 of 2016, filed by the petitioners for interim relief, is disposed of as infructuous.

Dt: 30th September, 2016
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(C.V.Nagarjuna Reddy, J)

