

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 4072 of 2016

ORDER:

1) Aggrieved by an order, dated 11.07.2016, passed in I.A.No.49 of 2016 in O.S.No.2 of 2013 on the file of the XI Additional District Judge, Piler, wherein an application filed U/ o.VIII Rule 9 of C.P.C. praying the Court to receive additional written statement was rejected, the present Civil Revision Petition is filed.

2) The petitioners are defendants 8 and 9 in O.S.No.2 of 2013 (old No.8 of 2007) filed by the plaintiff for partition of item Nos.1 to 5 of the suit schedule properties into thirty equal shares and to allot ten such shares to the plaintiff and to divide item No.6 of the suit schedule property into two equal shares and to allot one such share to the plaintiff by meets and bounds. Thereafter, the defendant No.1 filed his written statement. A memo came to be filed by the petitioners herein adopting the written statement filed by defendant No.1. In the said case the trial commenced and the plaintiff's evidence was closed. Thereafter, defendants got examined DW.1. At that stage, an application under Order VIII Rule 9 of C.P.C. came to be filed for filing additional written statement. A counter came to be filed opposing the same. After considering the rival arguments, the trial Court dismissed the said application. Challenging the same, defendants 8 and 9 preferred the present revision.

3) As seen from the record, the suit is of the year 2007 and defendant No.1 filed his written statement long back. Trial went on and after completion of entire evidence of plaintiff and after examining DW.1, the present application came to be filed nine years after filing of the suit. It is also an admitted fact that the petitioners, who were parties to the suit, did not chose to file any separate written statement at the earliest point of time but however, they adopted the written statement filed by defendant No.1.

4) In the original written statement filed by defendant No.1 it was categorically stated that defendant No.1 sold the entire schedule land to the petitioners herein for a consideration under registered sale deed dated 22.07.1999 and delivered possession to them. It was further stated that defendants 8 and 9 are in exclusive possession and enjoyment of the suit schedule property. Pattadar pass books and title deeds were also given to defendants 8 and 9. It was further stated that plaintiff and defendants 2 to 7 were aware about this since the same was done by way of registered sale deed dated 22.07.1999. Though defendants 2 to 7 did not question about the same, the plaintiff, who claims to have purchased the suit schedule property along with defendants 1 to 7 sent a notice dated 11.11.2005 to defendant No.1 for which a suitable reply was given on 26.11.2005. Thereafter, the plaintiff, who happens to be one of the shareholders in the suit schedule property, filed the above suit. Nine years later ie. after completion of evidence of DW.1 the present I.A. came to be filed

seeking permission of the Court to file additional written statement to show that the petitioners herein have developed the land by drilling borewells, planting mango trees, removing several boulders, erecting barbed wire fencing around the property etc. It is their case that they spent morethan Rs.50.00 lakhs for developing the said land. It is urged that without referring to the presence of trees and borewells the plaintiff filed a suit for partition.

5) A counter came to be filed by the plaintiff resisting the same. It has been stated in the counter that the suit was filed on 04.09.2006 which came to be numbered as O.S.No.8 of 2007 and later transferred to the XI Additional District Court, Piler wherein it was numbered as O.S.No.2 of 2013. Defendant No.1 filed detailed written statement on 07.08.2007 inter-alia referring to the delivery of the property to defendants 8 and 9 in furtherance of the sale deed dated 22.07.1999 under Ex.B4. It is the case of the plaintiff that defendants 8 and 9 are not the bonafide purchasers having good faith on defendant No.1. The plaintiff's claim that he is entitled 1/3rd share in item Nos.1 to 5 and half share in Item No.6 of the suit schedule property. It is further stated that defendants 2 to 7 are entitled to 1/3rd share each in item Nos.1 to 5 of the suit schedule property.

6) In order to appreciate the rival arguments it may be necessary to refer to Order VIII Rule 9 of C.P.C. which reads as under:

“Order VIII, Rule-9 of C.P.C.: Subsequent pleadings:
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.”

7) Order VIII Rule 9 of C.P.C. deals with subsequent pleadings. It has imposed bar on the parties from filing pleadings subsequent to filing of the written statement other than by way of defendant to set-off or counter-claim except by leave of the Court. It is no doubt true that this provision does not *per se* stipulate any limitations on the power of the Court to allow the parties to file subsequent pleadings. However, the Courts have interpreted this provision by reading certain limitations into the same, obviously to ensure that the scope of the proceedings is not unduly enlarged and the suit proceedings are not dragged on under the guise of filing subsequent pleadings.

8) Learned counsel for the petitioners relied upon the judgment of this Court in *Aloor Subrahmanyam v. Suthram Prabhakar and another*¹ in support of their claim. It was a case where the reason for rejection of subsequent written statement was due to failure to indicate in the petition as to what are the facts that have come to the light through the pleadings of respondent No.1 therein and that the leave of the Court cannot be

¹ (2012) 3 ALD 202

obtained for rejoinder without he coming out with specific pleading as to the necessity for filing such rejoinder. The same was challenged before this Court. The said judgment may not apply to the case on hand as in the said case the I.A. was dismissed on the ground that the written statement is silent as to the facts which they want to bring on record to establish their case.

9) Learned counsel for the petitioners also relied upon the judgment of this Court in *P.Hajiram Bi and others v. M.Ismail Khan and others*². It was a case where the suit filed for partition was coming up for cross-examination of PW.1. The respondents, who are defendants in the suit filed a petition seeking amendment of the written statement. The same was opposed by the plaintiff on the ground that it has been filed at a very belated stage. Having regard to the facts and circumstances of the case the trial Court allowed the petition. Challenging the same, a revision was preferred before this Court. This Court accepted the view taken by the trial Court holding that additional written statement is necessary in the facts and circumstances of the case. The said judgment may also not apply to the case on hand since the trial in the above case was at the stage of cross examination of PW.1.

10) Learned counsel for the respondents relied upon the judgment of the Apex Court in *P.A.Jayalakshmi v. H.Saradha and others*³, wherein the Apex Court while dealing with Order VIII

² (2012) 3 ALD 669

³ (2009) 14 SCC 525

Rule 9 and Order VI Rule 17 of C.P.C. held that the courts should be liberal in allowing applications for leave to amend pleadings but the Courts must bear in mind the statutory limitations brought about by reason of C.P.C. (Amendment) Acts and the proviso appended to Order VI Rule 17 of C.P.C.

11) In *Vidyabai v. Padmalatha*⁴ the Apex Court held that it is the primal duty of the court to decide as to whether such an amendment is necessary to decide the real dispute between the parties. Only if such a condition is fulfilled, the amendment is to be allowed.

12) As seen from the record, defendant No.1 filed his written statement in the year 2007, the same was adopted by the petitioners. The evidence of plaintiff was closed and thereafter the evidence of DW.1 was also adduced by the defendants. Nine years after filing of written statement, an application is filed seeking permission of the Court to file additional written statement. A reading of the additional written statement only indicate that they want to bring on record the fact of developments made in the said site by spending Rs.50.00 lakhs. It is their case that about 350 mango trees were planted, two or three borewells were dug and the entire land was fenced. These facts were not mentioned in the original written statement filed by defendant No.1 in the year 2007. The additional written statement is silent as to whether those developments were made after filing of the written statement or before filing of the written

⁴ (2009) 2 SCC 409

statement. On the other hand, the case of the plaintiff is that defendant No.1 has no right to sell the entire suit schedule property. If the plaintiff fails in the suit filed by him for partition, definitely defendants 8 and 9 may be entitled to their claim. On the other hand, if the plaintiff succeeds, defendant No.1 would be entitled to, if any, as decided in the said suit. Therefore, the development of land by the petitioners, which fact they want to bring on record by way of filing additional written statement may not *ipso facto* has any bearing on the suit. If really they intend to bring these facts on record, defendants 8 and 9, who are parties to the proceedings can always enter the witness box and adduce evidence to that effect. Hence, the argument of the learned counsel for the respondent that if the said application is allowed, there is every likelihood of proceedings getting delayed further cannot be brushed aside.

13) Having regard to the above, I see no reason to interfere with the order passed by the trial Court. However, the petitioners are at liberty to take steps for adducing evidence on their behalf, in which event the same shall be dealt with in accordance with law.

14) Giving the said liberty, the Civil Revision Petition is disposed of. There shall be no order as to costs. Miscellaneous Petitions, if any, pending in this Civil Revision Petition, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

29.08.2016
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