

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.1556 of 2016

ORDER:

This Civil Revision Petition under Article 227 of the Constitution of India by the first respondent-plaintiff is directed against the orders, dated 25.02.2016, of the learned I Additional Chief Judge, City Civil Court, Secunderabad, passed in I.A.no.319 of 2016 in OS.no.197 of 2012 filed under Order VI Rule 17 read with Section 151 of the Code of Civil Procedure, 1908, ('the Code', for brevity) requesting to permit the petitioner/ 3rd defendant to amend the written statement dated 30.03.2013 by deleting the said entire written statement filed in her name and substitute the same with the proposed written statement-cum-counter claim as detailed in the enclosed petition list.

2. I have heard the submissions of Sri MANU, learned counsel for the revision petitioner/ 1st respondent/ plaintiff ('the plaintiff', for short). Though 1st respondent herein (3rd defendant) is served with the notice, none appeared. Respondents 2 to 5 are stated to be not necessary parties. I have perused the material record.

3. To begin with, the introductory facts, in brief, are as follows:

The plaintiff brought the suit against the defendants to handover vacant peaceful possession of the plaint schedule property to the plaintiff; for recovery of Rs.1,70,000/- towards damages for the period from 01.01.2010 to 31.10.2012 @ Rs.5,000/- per month besides Rs.18,000/- per month from 01.11.2012 till the delivery of possession of the plaint schedule property to the plaintiff and for costs. The suit was filed in October 2012 (30.10.2012). In March, 2013 (30.03.2013), the 3rd defendant's written statement was filed. When the trial has commenced in the suit, the 3rd defendant filed the subject application for deletion of the earlier written statement and to permit her to file the proposed written statement-cum-counter claim in substitution of the

earlier written statement. That petition was resisted by the plaintiff by filing a counter. No oral and documentary evidence was adduced at the time of hearing before the trial Court. On merits, and by the order impugned in this revision, the trial Court allowed the said petition filed by the 3rd defendant. Therefore, the aggrieved plaintiff filed this revision petition.

4. The case of the 3rd defendant in support of her request to permit her to substitute the original written statement with the proposed written statement-cum-counter claim, in brief, is as follows:

This 3rd defendant is the second wife of late Penteshwar Rao, who worked in MCH during his life time. After the demise of his first wife, he married this defendant. He died, on 06.02.1985, leaving behind him his legal heirs including the children through his first wife. On 14.03.1985, in the presence of well wishers, there was a family settlement amongst this defendant and her step children with respect to the service benefits, compassionate appointment and enjoyment of the suit property. As per the settlement, she is entitled to the pensionary benefits of her husband; the suit property is to be divided into three shares after marriages of her children, Rajesh and Shoba Pani. However, this defendant's step son, Satyanarayana, did not evince any interest in taking up the job, on compassionate grounds, in the department of the late husband of this defendant. Therefore, this defendant was provided a job in MCH on compassionate grounds. Thereafter, differences arose amongst all the legal heirs of the deceased Penteswara Rao. As such this defendant is living separately. The plaintiff, being a resident of the same locality of the plaint schedule property, is aware of the disputes amongst this defendant and the legal heirs of her late husband including her step children. He used to now and then pamper this defendant saying that without the knowledge of the other legal heirs of her husband he will get the suit house transferred in her name by completing all the formalities with the MCH authorities and that she has to incur an expenditure of about

Rs.1,50,000/- for the said purpose. She expressed her inability to pay the said amount. Then the plaintiff assured her that after transfer of the property in her name, she can create a mortgage in his favour and pay the said expenditure as per her convenience. On that pretext of completing the formalities of transferring the property in her name, he obtained, on various occasions, her photographs and thumb impressions on papers. After transfer of the suit property in her name, he obtained a registered mortgage deed in his favour in the month of July, 2007. Thereafter also, on the pretext of revival of the said debt, he used to obtain the photographs and papers with the thumb impressions of this defendant. While so, on 05.11.2015, this defendant came to know through B. Srinivas, the husband of the 5th defendant, G. Leelarani, about the pendency of the present suit proceedings and that the suit is posted to 06.11.2015. On 06.11.2015, she went to the Court and made enquiries and came to know that one C.M. Ugender, the junior counsel of the counsel for the plaintiff, is appearing on her behalf and that he filed vakalat and written statement on her behalf. She does not know the said Ugender, advocate; she never instructed him to file vakalat and written statement. Hence, she filed an application for change of the counsel and then obtained certified copies of the plaint and written statement. She came to know that by taking advantage of the faith reposed, the plaintiff manipulated several things by misusing photographs and the papers with thumb impressions that were obtained from her on the pretext of obtaining the sale deed in her name and revival of the debt. This defendant reposed faith in him and in his acts as he was successful in obtaining the sale deed in her name from the MCH. After going through the contents of the plaint in the instant suit, this defendant came to know that taking undue advantage of this defendant's illiteracy and innocence and on the pretext of obtaining a mortgage deed, the plaintiff obtained a registered sale deed in his favour *vide* registered document bearing No.1342 of 2007 without explaining the contents of the said document and by fraud and

misrepresentation of facts. This defendant is only a co-owner of the suit property and she never executed the sale deed in favour of the plaintiff in respect of the suit schedule property at any point of time nor did she receive any amount towards sale consideration. The fraudulently obtained sale deed is not valid and is liable to be cancelled. The sale deed was obtained *mala fide* by defrauding and cheating this defendant. If the said sale deed is allowed to stand, it may cause serious loss and may seriously affect the title in the suit schedule house of this defendant and the other lawful owners. This defendant never appointed the said counsel, C.M. Ugender, and never instructed him to file the written statement. The written statement purportedly filed on 30.03.2013 on behalf of this defendant is not one filed on her instructions. It was filed by the said counsel on the instructions of the plaintiff. Therefore, the same cannot be treated as the written statement of this defendant. Therefore, she is entitled to present her defence by requesting to delete the contents of the earlier statement dated 30.03.2013 and by submitting a new written statement-cum-counter claim in substitution thereof. Hence, in the facts and circumstances stated, the present petition is filed for deleting the written statement already filed and substituting the same with the present written statement-cum-counter claim enclosed to the instant petition.

5. *Per contra*, the case of the plaintiff, apart from denial of the allegations made in the affidavit of the 3rd defendant, in brief, is this:

The 3rd defendant on account of the disputes between her and the children of the first wife of late Penteshwar Rao and because of her personal necessities and financial problems intended to alienate the plaint schedule property to a third party and engaged mediators. One of such mediators contacted the plaintiff as he was interested in purchasing a property nearer to the place where he was residing. On the date of the execution and registration of the sale deed, the plaintiff paid in cash, Rs.20,67,000/- to the 3rd defendant, in the presence of witnesses. The receipt of the sale consideration

was confirmed by the 3rd defendant before the registering authority. The 3rd defendant also handed over the previous title deeds in respect of the plaint schedule property to the plaintiff. On the date of execution and registration of the sale deed, the 3rd defendant and her children, including the defendants 1 and 2, agreed to handover vacant possession of the property to the plaintiff. Accordingly, the 3rd defendant and her own children vacated the premises. But the defendants 1 and 2 continued to occupy the plaint schedule property with *mala fide* intentions and oblique motives and were demanding ransom to deliver vacant possession of the same. The defendants 1 and 2 filed OS.No.102 of 2008 on the file of the Court of the learned I Additional Chief Judge, City Civil Court, Secunderabad, against the 3rd defendant, her son, Rajesh, the plaintiff herein and the MCH for declaration of title and perpetual injunction. Certified copies of the plaint and the application in IA.No.2782 of 2008 in the said suit are filed in the present suit. The 3rd defendant and her son, Rajesh, on one hand and the defendants 1 and 2 on the other are having disputes. The 3rd defendant informed the plaintiff that she executed the registered sale deed in his favour as the defendants 1 and 2 are creating troubles to her and her son. The 1st defendant lodged a private complaint on the file of the Court of the learned XI Additional Chief Metropolitan Magistrate, City Criminal Courts, Secunderabad, against the 3rd defendant, her son, Rajesh, and the plaintiff within a period of three months from the date of the execution and registration of the sale deed in his favour. A case in crime no.378 of 2007 was registered. The 3rd defendant filed a written statement resisting the suit filed by the defendants 1 and 2. OS.no.102 of 2008 was dismissed on 18.12.2012 as the plaintiffs therein failed to prosecute the said suit. Certified copy of the judgment and decree in the said OS.no.102 of 2008 are also filed into Court. The plaintiff filed the instant suit against the defendants for recovery of possession of the suit house property and damages. On receipt of summons, the 3rd defendant approached her counsel, C.M. Ugender, and engaged him to

file Vakalat on her behalf stating that she cannot engage a senior counsel due to paucity of funds. Under the said circumstances, the Vakalat and, subsequently, the written statement were filed on the instructions of the 3rd defendant. For drafting the present written statement, the copy of the written statement filed in OS.no.102 of 2008 is also handed over to the said counsel. The 3rd defendant cannot be permitted to delete the entire written statement dated 30.03.2013 and substitute the same with the written statement-cum-counter claim as detailed in the petition list as it is contrary to law. The relief claimed in the counter claim is untenable and is barred by limitation. The petition of the 3rd defendant is not maintainable on the facts narrated above nor in law and for the following reasons: (i) the application for amendment has been filed with *mala fide* intentions and it is not a *bona fide* application; (ii) the application for amendment has been filed after the commencement of the trial for the purposes of withdrawing the admissions made in her written statement; (iii) the application for amendment has been filed to resile from the categorical admissions made in the written statement dated 30.03.2013; (iv) if such amendments are allowed, the plaintiff will be irretrievably prejudiced; (v) the proposed amendments, if permitted, would cause great prejudice, which cannot be compensated adequately in terms of money; (vi) the application for amendment constitutionally and fundamentally changes the nature and character of the defence and the case; (vii) the application for amendment cannot be allowed, if a fresh suit for the amended claims, is barred by limitation on the date of application; (viii) the application for amendment has been filed by the petitioner/ 3rd defendant as an after thought and by way of speculative litigation due to escalation of the prices of the immovable properties; (ix) the petition which is not properly filed is not maintainable; and (x) as per the ratios in the judgments of the Supreme Court reported in (a) (1976) 4 SCC 320 and (b) 2015 (10) SCJ 619, the petition is not maintainable.

6. The learned counsel for the plaintiff would contend as follows: “The trial Court exercised jurisdiction not vested in it and decided the matter illegally, arbitrarily and with material illegality and thereby caused grave injustice to the plaintiff. The trial court failed to take into consideration the following settled principles: (a) admissions made in written statement cannot be permitted to be withdrawn, by way of amendment; (b) a categorical admission made in written statement cannot be allowed to be resiled from; and, (c) attempt to wholly resile from the admissions made after considerable time cannot be permitted. The trial court erroneously granted permission to delete the entire written statement dated 30.03.2013 and substitute the same with a new written statement-cum-counter claim, which is barred by law of limitation. The trial court erred in not taking into consideration the fact that the application filed by the 3rd defendant was *mala fide* and that the amendment sought for causes great prejudice to the plaintiff, which cannot be compensated adequately in terms of money and that the amendment constitutionally and fundamentally changes the nature and character of the case and that the claims raised in the proposed amendment-cum-counter claim are barred by limitation even as on the date of the filing of the subject application. The trial Court ought to have seen that when a fresh suit on the claims mentioned in the proposed written statement-cum-counter claim is barred under law, then such an amendment shall not be permitted. The trial court ignored the principles laid down by the Supreme Court that the application for amendment which wholly withdraws the admissions in the pleadings cannot be permitted. The Court below failed to take note of the difference between an amendment which wholly withdraws the admissions in the pleading and an amendment which is in the nature of clarification. The trial court erroneously came to the conclusion that the 3rd defendant is only an illiterate thumb impressionist by ignoring the fact that her case is that she has approached the plaintiff to get the subject property registered in her name by

the MCH without the knowledge of the other legal heirs of her late husband and that she has also got a job in GHMC on compassionate grounds contrary to the settlement before the elders. The Court below also ignored the other subsequent events that establish that the 3rd defendant is a shrewd but not a gullible woman. Above all, the trial Court should have seen that her son is a witness to the sale deed executed by her in favour of the plaintiff. The trial Court erroneously came to the conclusion that the principles laid down by the Supreme Court in the decision reported in AIR 1974 SC 471 at paragraph 26 support the case of the 3rd defendant and wrongly ignored the settled principles that admissions, which are true and clear, are by far the best proof of the facts admitted and that admissions in pleadings or judicial admissions are admissible under Section 58 of the Indian Evidence Act and that any admissions made by the parties or their agents at or before the hearing of the case stand on a higher footing than evidentiary admissions and that the former class of admissions are fully binding on the party who makes them and constitute a waiver of proof and that they by themselves can be made the foundation of the rights of the parties. The trial Court erroneously relied upon the decision in AIR 1968 SC 956 without taking into consideration that in the said case the parties were standing in a position of active confidence. The trial Court did not take into consideration the fact that there cannot be any fraudulent misrepresentation as to the character of the document, as the 3rd defendant, who has obtained two registered documents in her favour, was very well aware about the natures and characters of the documents. The trial court failed to take into consideration the further fact that the 3rd defendant executed a registered sale deed in favour of the plaintiff as there were serious disputes between her, her son, her daughter on the one hand and the children of the first wife of Penteshwar Rao on the other. The trial Court failed to take note of the fact that a police complaint was lodged by G. Narsing Rao, son of Penteshwar Rao, against the plaintiff, the 3rd defendant in the instant suit and

her son, Rajesh, alleging that the sale deed in respect of the plaint schedule property was illegally executed by the 3rd defendant in favour of the plaintiff and that a case in Crime No.378 of 2007 was registered.”

7. I have bestowed my attention and given earnest consideration to the facts and the submissions. I have carefully gone through the pleadings.

8. Though the merit of the proposed amendment is also to be examined on the ground of delay and the bar postulated in the *proviso* to Order VI Rule 17 of the Code, the said aspect requires consideration if only the 3rd defendant crosses the first hurdle that the amendment of the written statement being sought for, deserves to be allowed on the facts peculiar to case and on its own merit. Further, as the 3rd defendant is seeking permission of the Court to delete her earlier entire written statement and to substitute the same with a new written statement-cum-counter claim, it would be apt, at the outset, to refer to the factual aspect. Hence, it is now necessary to examine in juxtaposition the content of the original written statement and the proposed new written statement-cum-counter claim.

9. I have carefully gone through the pleadings of the 3rd defendant. In the original written statement, the 3rd defendant admitted that to meet her necessities she agreed to sell the plaint schedule property to the plaintiff and that she executed registered sale deed dated 16.07.2007 and that she and her children including defendants 1 and 2 agreed to deliver possession of the plaint schedule property and that the defendants 1 and 2 with a *mala fide* intention and oblique motives instead of vacating and handing over vacant possession of the same, continued to occupy the plaint schedule property and that they are demanding ransom and that in furtherance of the said motive, they filed a suit for declaration and perpetual injunction in O.S.No.102 of 2008 on the file of the Additional Chief Judge Court and that on the date of the execution of the sale deed by her, the defendants 1 and 2 requested the plaintiff herein a

couple of days time for handing over vacant and peaceful possession of the property to the plaintiff and that therefore, she agrees to the plaintiff's entitlement to the suit claim. Thus, in the original written statement the 3rd defendant categorically admitted the plaintiff's case and the plaintiff's entitlement to a decree in the suit. However, in the proposed written statement-cum-counter claim, the 3rd defendant resiles from all the admissions made in the original written statement filed into Court and *inter alia* pleads therein that the said sale deed was obtained by taking undue advantage of the faith reposed by her upon the plaintiff in the circumstances stated by her and that by misusing her photographs and papers containing thumb impressions and by mis-representing facts and by playing fraud, the plaintiff obtained from the 3rd defendant a registered sale deed by stating that he is obtaining a mortgage deed and that the said sale deed was obtained without paying any consideration. She also pleads in the proposed written statement-cum-counter claim that she did not engage the advocate, Ugender, and that she did not give him vakalat and instruct him to file written statement and that her written statement already filed into Court was filed on the instructions of the plaintiff and without her knowledge. Further, by way of the proposed counter claim, the 3rd defendant now seeks the relief of cancellation of registered sale deed dated 16.07.2007 on the above said and other grounds. It is an admitted fact that in the earlier suit O.S.No.102 of 2008 on the file of the Court of the I Additional Chief Judge, City Civil Court, filed by the defendants 1 and 2 in the instant suit, the 3rd defendant herein, who is the 1st defendant in the said suit, filed a written statement admitting that she (3rd defendant herein) sold the plaint schedule property to the 3rd defendant therein, i.e., the plaintiff herein on 16.07.2007 and that the plaintiff herein is the absolute owner of the same and that she has no right whatsoever over the plaint schedule property. The said suit was later dismissed. It is also an admitted fact that one of her sons attested the said sale deed. Thus, by way of the proposed written statement-

cum-counter claim, which the 3rd defendant wants to substitute in the place of her earlier written statement, the 3rd defendant is intending to withdraw her entire written statement which contains her admissions made in favour of the case of the plaintiff much to the disadvantage of the plaintiff. It is not her case that her earlier written statement filed as 1st defendant in the former suit, O.S.No.102 of 2008, was filed not at her instance but under fraud or misrepresentation. That written statement in the former suit was filed by the 3rd defendant herein on 07.04.2009. Therefore, on the very facts of the case, it is evident that the present attempt to withdraw the earlier written statement containing admissions and substitute the same with a written statement-cum-counter claim containing altogether different contentions is an afterthought and is not *bona fide* and that the allegations *prima facie* made in support of the present request are far from truth and that therefore, the 3rd defendant has not made out valid and sufficient grounds for permitting her to delete her earlier written statement and substitute the same with the proposed statement-cum-counter claim.

10. Having thus noted the factual aspect, now, it is necessary to note the legal position, which is as follows:

(i) In Nagindas Ramdas v. Dalpatram Ichharam @Birjram¹, the Supreme Court held as follows:

“Admissions, if true and clear, are by far the best proof of the facts admitted. Admissions in pleadings or judicial admissions, admissible under Section 58 of the Evidence Act, made by the parties or their agents at or before the hearing of the case, stand on a higher footing than evidentiary admissions. The former class of admissions are fully binding on the party that makes them and constitute a waiver of proof. They by themselves can be made the foundation of the rights of the parties. On the other hand, evidentiary admissions which are receivable at the trial as evidence, are by themselves, not conclusive. They can be shown to be wrong.”

¹ (1974) 1 Supreme Court Cases 242

(ii) In *Gautam Sarup v. Leela Jetly and others* [2008 (5) SCJ 844]

after referring to the earlier decisions, the Supreme Court held as follows:

“What, therefore, emerges from the discussions made hereinbefore is that a categorical admission cannot be resiled from but, in a given case, it may be explained or clarified. Offering explanation in regard to an admission or explaining away the same, however, would depend upon the nature and character thereof. It may be that a defendant is entitled to take an alternative plea. Such alternative pleas, however, cannot be mutually destructive of each other. An explanation can be offered provided there is any scope therefor. A clarification may be made where the same is needed.”

(iii) In *Revajeetu Builders & Developers v. Narayanaswamy & Sons*², the Supreme Court having referred to the legal position in the decision in *Gautam Sarup v. Leela Jetly and others* (supra) postulated the following principles, which are relevant for consideration while allowing or rejecting the application for amendment.

- (1) whether the amendment sought is imperative for proper and effective adjudication of the case;
- (2) whether the application for amendment is bona fide or mala fide;
- (3) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;
- (4) refusing amendment would in fact lead to injustice or lead to multiple litigation;
- (5) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and
- (6) as a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

After postulating the above principles, the Supreme Court observed that the above principles are some of the important factors, which may be kept in mind while dealing with application filed under Order 6 Rule 17 and that the same are only illustrative and not exhaustive.

² 2009 (8) SCJ 401

(iv) In *Ram Niranjana Kajaria v. Sheo Prakash Kajaria*³, the Supreme Court held as follows:

‘We agree with the position in *Nagindas Ramdas* (supra) and as endorsed in *Gautam Sarup* (supra) that a categorical admission made in the pleadings cannot be permitted to be withdrawn by way of an amendment.’

(v) In *M/s Modi Spinning and Weaving Mills Co. Ltd. V. M/s. Ladha Ram and Co.*⁴, the Supreme Court having regard to the facts of the case and the legal position obtaining, held as follows:

‘It is true that inconsistent pleas can be made in pleadings but the effect of substitution of paras 25 and 26 is not making inconsistent and alternative pleadings but it is seeking to displace the Plaintiff completely from the admissions made by the Defendants in the written statement. If such amendments are allowed the Plaintiff will be irretrievably prejudiced by being denied the opportunity of extracting the admission from the Defendants. The High Court rightly rejected the application for amendment and agreed with the trial court.’

In view of the above legal position and the finding arrived at on the analysis of the facts peculiar to this case, this Court is of the considered view that the amendment being sought for by the 3rd defendant cannot be permitted in the facts and circumstances of the case.

11. There is one more aspect to be considered as the 3rd defendant is not only seeking permission to substitute her written statement with a written statement but also seeking permission to file a written statement-cum-counter claim. According to the 3rd defendant, the cause of action for the counter claim arose after 06.11.2015, i.e., after she came to know about the present suit and her earlier written statement filed in the same suit. Therefore, the 3rd defendant pleads that the cause of action for the proposed counter claim arose after her written statement was already filed into Court in March, 2013. Since the cause of action for the proposed counter claim arose after filing of the

³ 2015 (10) SCJ 619

⁴ AIR 1977 SUPREME COURT 680(1)

written statement, the short question is as to whether the 3rd defendant can be permitted to file a counter claim at this stage. The relevant provision under Order VIII Rule 6-A of the Code reads as under:

Order VIII Rule 6-A:

Counter-claim by defendant:- (1) A defendant in a suit may, in addition to his right of pleading a set-off under Rule 6, set up, by way of counter-claim against the claim of the plaintiff, any right or claim in respect of a cause of action accruing to the defendant against the plaintiff either before or after the filing of the suit but before the defendant has delivered his defence or before the time limited for delivering his defence has expired, whether such counter-claim is in the nature of a claim for damages or not:

Provided that such counter-claim shall not exceed the pecuniary limits of the jurisdiction of the Court.

(2) Such counter-claim shall have the same effect as a cross-suit so as to enable the Court to pronounce a final judgment in the same suit, both on the original claim and on the counter-claim.

(3) The plaintiff shall be at liberty to file a written statement in answer to the counter-claim of the defendant within such period as may be fixed by the Court.

(4) The counter-claim shall be treated as a plaint and governed by the rules applicable to plaints.

In Gurram Allabaksh and ors. V. Shaik Habeebullabasha and ors⁵, a learned Single Judge of this Court while disagreeing with the earlier view of another learned Single Judge in Sugesan and Company (P) Ltd., Madras v. KMT Ltd., [2004(3) ALD 57] held as follows: 'With great respect to the learned Judge who rendered the said judgment, it is noticed that the proposition runs contrary to Rule 6-A enacted by the Parliament. It is not as if a Defendant in a suit is without any relief, if a cause of action has arisen to him, vis-à-vis the plaintiff, at a stage subsequent to the filing of the written statement. He can file an independent suit, and the facility of filing counter-claim cannot be permitted to be used to shatter the entire progress that has taken place in the suit, on the basis of the written statement and the issues framed therein.' While rendering the decision, the learned Single Judge of this Court referred to the decision of the supreme Court in Jagmohan Chawla v. Dera Radha Swami Satsang [1996 (4) ALD 57] wherein it was held as follows:

".....It need not relate to or be connected with the original cause of action or matter pleaded by the plaintiff. The words "any right or claim

⁵ 2011 (3) ALT 9

in respect of a cause of action accruing with the defendant" would show that the cause of action from which the counter-claim arises need not necessarily arise from or have any nexus with the cause of action of the plaintiff that occasioned to lay the suit. The only limitation is that the cause of action should arise before the time fixed for filing the written statement expires. The defendant may set-up a cause of action which has accrued to him even after the institution of the suit. The counter-claim expressly is treated as a cross-suit with all the indicia of pleadings as a plaint including the duty to aver his cause of action and also payment of the requisite Court fee thereon. Instead of relegating the defendant to an independent suit, to avert multiplicity of the proceeding and needless protection, the Legislature intended to try both the suit and the counter-claim in the same suit as suit and cross-suit and have them disposed of in the same trial. In other words, a defendant can claim any right by way of a counter-claim in respect of any cause of action that has accrued to him even though it is independent of the cause of action averred by the plaintiff and have the same cause of action adjudicated without relegating the defendant to file a separate suit.....'

In *Ananta Gas Suppliers and others v. Union Bank of India* [MANU/ AP/ 1065/ 2006 = 2007(3) ALT 327], a learned Single Judge of this Court also took the view that a counter claim is not maintainable if the cause of action for the counter claim accrues after filing of the written statement.

12. Reverting to the facts of the case on hand, it is the case of the 3rd defendant that the cause of action for the counter claim arose long after the filing of the earlier written statement, that is, in November, 2015 when the 3rd defendant came to know about the misrepresentation made and fraud played in obtaining the sale deed from her by the plaintiff. Therefore, the proposed counter claim for which the cause of action admittedly arose after the filing of the written statement cannot be entertained by the Court on the ground that the essential ingredients of Order VIII Rule 6-A of the Code are not satisfied.

13. On the above analysis, this Court finds that the order of the trial Court allowing the application of the 3rd defendant and permitting her request to

delete the earlier written statement and substitute the same with the proposed written statement-cum-counter claim is not justified under facts and law and hence, cannot be sustained.

14. In the result, the Civil Revision Petition is allowed and the order of the learned I Additional Chief Judge, City Civil Court, Secunderabad, passed in I.A.no.319 of 2016 in OS.no.197 of 2012 is set aside and as a sequel, the said petition is dismissed.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, in this revision shall stand closed.

13th December, 2016
Vjl



JUSTICE M. SEETHARAMA MURTI