

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.2082 of 2016

ORDER:

This Civil Revision Petition under Article 227 of the Constitution of India by the unsuccessful petitioner-plaintiff is directed against the order dated 17.02.2016 of the learned XIV Additional District Judge, Ranga Reddy District at L.B. Nagar, passed in IA.no.284 of 2013 in OS.no.799 of 2009 filed by the plaintiff under Order VIII Rule 9 of the Code of Civil Procedure, 1908, ('the Code', for short) requesting to grant leave to file rejoinder to the written statement filed by the 1st defendant.

2. Heard Sri Y. Rama Rao, learned counsel for the revision petitioner-plaintiff ('the plaintiff', for short) and Sri B. Venkat Rama Rao, learned counsel for the 1st respondent-1st defendant ('the 1st defendant', for brevity). 2nd respondent/ 2nd defendant is stated to be not a necessary party. I have perused the material record.

3. The facts in a nutshell are as follows:

The plaintiff brought the suit against the defendants for declaration of title and recovery of possession in respect of properties morefully described in plaint 'A' and 'B' schedules. The 2nd defendant remained *ex parte*. The 1st defendant filed a written statement. Before the trial has commenced, the plaintiff filed the subject application to permit her to file a rejoinder to the written statement of the 1st defendant as the 1st defendant in her written statement, while denying the claims of the plaintiff, stated her defence in detail and alternatively pleaded that the possession of the 1st defendant over the plaint 'A' schedule property since 1989 is continuous, uninterrupted and to the knowledge of the plaintiff and her predecessor in title and to the knowledge of the vendors of vendors of the 1st defendant for more than the

statutory period and thus the 1st defendant has perfected title by adverse possession in respect of plaint 'A' schedule property and that the right of the plaintiff or her predecessor in title if any over the plaint 'A' schedule property stood extinguished as they are out of possession for more than the statutory period. The 1st defendant resisted the application by filing a counter. At the hearing before the trial Court no oral and documentary evidence was adduced. The trial court having made a reference to the object of Order VIII Rule 9 of the Code dismissed the application on the ground that merely because the 1st defendant had raised an alternative plea of adverse possession, there is no need for the plaintiff to file a rejoinder and that the said issue will be decided on the pleadings already available on record. Therefore, the aggrieved plaintiff is before this Court.

4. At the hearing, learned counsel for the plaintiff would submit as follows: 'Since the 1st defendant had taken a specific plea of adverse possession, the trial Court ought to have permitted the plaintiff to file rejoinder as in the rejoinder, the plaintiff, while denying the allegations in the written statement concerning adverse possession, wanted to specifically state that the plaintiff was in possession of plaint 'A' schedule property from the date of her purchase till the same is illegally occupied by the 1st defendant in the 1st week of March, 2007 and that the suit filed in the year 2009 is within the period of limitation and that the 1st defendant did not perfect title by way of adverse possession in respect of plaint 'A' schedule property. The trial Court ought to have seen that permitting the plaintiff to file rejoinder with the above stated additional plea is not going to cause any prejudice to the 1st defendant but, it only gives an opportunity to the plaintiff to explain as to why the plea of adverse possession is not available to the 1st defendant.

5. *Per contra*, the learned counsel for the 1st defendant supported the orders of the Court below and contended that the plaintiff need not file an

additional pleading or a rejoinder to answer the plea of adverse possession taken by the 1st defendant in her written statement and that a rejoinder can be permitted if only there is necessity to explain additional facts which are incorporated by the 1st defendant in the written statement and that even without filing an additional pleading, the plaintiff can always show that the alternative defence of the 1st defendant based on plea of adverse possession is not true and such a defence is not available to the defendant.

6. I have given earnest consideration to the facts and the submissions. As already noted, in the suit for declaration of title and recovery of possession in respect of 'A' & 'B' schedule properties, the 1st defendant having filed a written statement raised an alternative plea of adverse possession in respect of the plaint 'A' schedule property. Therefore, the plaintiff now wants to file a rejoinder to the written statement. By way of the pleadings stated in the said rejoinder the plaintiff intends to deny the plea of adverse possession raised by the 1st defendant and state that the plaintiff is in occupation of plaint 'A' schedule property till the 1st defendant illegally occupied the same in the 1st week of March, 2007 and that the suit filed in the year 2009 is well within time and that therefore the plea of adverse possession is not open to the 1st defendant. In the present context, it is necessary to refer to Order VIII Rule 9 of the Code, which deals with subsequent pleadings, which reads as under:

'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.'

The law is now well settled that the plaintiff can be permitted to file a rejoinder only to explain the additional facts which are incorporated in the written statement and that the object of the provision is to enable the party to

supply what is omitted inadvertently or unintentionally. Merely to deny the alternative plea of adverse possession and to assert the case, which is already stated in the plaint particularly in the paragraph dealing with the cause of action, the plaintiff need not be permitted to file a rejoinder, more particularly, when the law does not compel the plaintiff to file a rejoinder denying the allegations made in the written statement. As per the settled legal position, the failure to file a rejoinder cannot be treated as an admission of the plea in the written statement. [See: Veerasekhara Varmaraya v. Amirtavalliammal AIR 1975 Mad 51]. In view of the settled legal position and the facts of the case, this Court is of the considered view that the trial court is justified in not permitting the plaintiff to file a rejoinder and in-fact there was absolutely no necessity in the present case to permit the plaintiff to file a rejoinder.

7. In the result, the Civil Revision Petition is dismissed confirming the order of the trial Court.

Miscellaneous petitions pending, if any, in this revision shall also stand dismissed. No order as to costs.

JUSTICE M. SEETHARAMA MURTI

17th November, 2016
Vjl