

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.2193 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.286 of 2013 in OS.no.800 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 sole defendant (since died).

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 respondents 3 to 5- defendants 3 to 5, the legal representatives of the deceased sole defendant. I have perused the material record.

3. The facts in a nutshell are as follows:

The plaintiff brought the suit against the sole defendant for declaration of title and recovery of possession in respect of properties morefully described in plaint 'A' and 'B' schedules. The defendant filed a written statement. Before the trial has commenced, the plaintiff filed the subject application to permit him to file a rejoinder to the written statement of the defendant as the defendant in his written statement, while denying the claims of the plaintiff, stated his defence in detail and alternatively pleaded that the possession of the defendant and his wife, who is not a party to the suit, over the plaint 'A' and 'B' schedule properties since 1989 is continuous, uninterrupted and to the knowledge of the plaintiff and his predecessor in title and to the knowledge of the vendors of vendors of the defendant for more than the statutory period and thus the defendant and his wife perfected title by adverse possession in respect

of plaint 'A' and 'B' schedule properties and that the right of the plaintiff or his predecessor in title, if any, over the plaint 'A' and 'B' schedule properties stood extinguished as they are out of possession for more than the statutory period. The 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 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 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' and 'B' schedule properties from the date of his purchase till the same is illegally occupied by the 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 defendant and his wife did not perfect title by way of adverse possession in respect of plaint 'A' and 'B' schedule properties. 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 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 defendant.'

5. *Per contra*, the learned counsel for the respondents 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 defendant in his written statement and that a rejoinder can be permitted if only there is necessity to explain additional facts which are incorporated by the defendant in the written statement and that even without filing an additional pleading, the plaintiff can always show that the alternative defence of the 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 defendant having filed a written statement raised an alternative plea of adverse possession in respect of plaint 'A' and 'B' schedule properties. 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 defendant and state that the plaintiff is in occupation of plaint 'A' and 'B' schedule properties till the 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 therefore the plea of adverse possession is not open to the 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.

17th November, 2016
Vjl

JUSTICE M. SEETHARAMA MURTI