

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 5297 of 2016

ORDER:

1) Assailing the order, dated 12.09.2016 passed in I.A.No.592 of 2016 in O.S.No.5 of 2013 on the file of the II Additional Junior Civil Judge, Chittoor, wherein an application filed under Order VIII Rule 9 and Section 151 C.P.C. to permit the petitioners to file additional written statement was rejected, the present Civil Revision Petition is filed.

2) The first respondent herein filed O.S.No.5 of 2013 seeking injunction restraining the defendants, their men, agents, servants, followers etc., from in any way interfering with the plaintiff's peaceful possession and enjoyment of the plaint schedule property. A written statement came to be filed by the defendants disputing the averments in the plaint. Pending the said suit and after completion of plaintiff's evidence, the defendants filed an application seeking permission of the Court to file additional Written Statement. The averments in the affidavit filed in support of the application show that due to oversight and non-availability of all the records, a detailed written statement could not be filed. It is further stated that filing of additional written statement will not change the nature of the case or alter the case and no prejudice would be caused to the plaintiff.

3) A counter came to be filed by the plaintiff stating that additional written statement which is sought to be filed is vague and it does not in any way help the defendants. It is her case that the said application is filed only with a view to drag on the proceedings. Since the suit is for injunction and as there is no difficulty in identifying the schedule property, filing of an additional written statement referring to the boundaries may not be necessary. It is stated that the averments in the additional written statement show that the way leading from the main road situated on the West to the schedule property running upto kunta is no way concern to the suit property. It is her case that if the petition is allowed, issues have to be framed again and the evidence of the plaintiff need be adduced again. Having regard to the above, she submits that the present application is filed only to drag on the proceedings and the same is liable to be dismissed.

4) After considering the rival submissions made, the trial Court dismissed the application. Challenging the same the present Civil Revision Petition is filed.

5) The point that arises for consideration is whether the learned trial Judge was correct in dismissing the application filed by the petitioners seeking leave to file additional written statement.

6) As seen from the record, O.S.No.5 of 2013 came to be filed seeking injunction. The averments in para Nos.7 and 8 of the plaint clearly refer that defendant Nos.1 and 2 having landed

properties adjacent to the plaint schedule property. About 20 days back defendant Nos.1 to 3 are said to have gone in large group, and removed the fence laid for the mango garden of the plaintiff which is adjacent to mango garden of defendant Nos.1 and 2. It is clearly stated in the plaint that defendant Nos.1 to 3 have also removed the demarcated stones planted in between the suit land and the lands of defendant Nos.1 and 2.

7) A reading of para No.3 of the additional written statement shows that some new pleas have been taken. Whether this new plea will prevent the plaintiff from succeeding in the case is a matter to be decided at the time of trial and not at the time of receiving the statement. Therefore, the additional written statement wherein an attempt is made to explain the original statement, giving further particulars, cannot be labelled as entirely a new one, disowning the original case.

8) Order VIII Rule 9 of C.P.C. permits the defendant to file subsequent pleadings after getting leave of the court. Further, for better appreciation, order VIII Rule 9 of C.P.C. is extracted below:-

“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.”

9) 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 does not say that no application for receiving the additional statement shall be allowed, after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial, as provided under Order 6, Rule 17, C.P.C. proviso.

10) In *P.A. Jayalakshmi v. H. Saradha and others*¹, wherein the Apex Court while dealing with Order VIII 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) The trial Court rejected the request only on the ground that evidence of PW.1 was recorded. It is to be noted that the petitioner while filing written statement took a liberty for filing additional written statement as and when necessary. In fact a reading of the additional written statement would show that an attempt was made only to explain the original written statement and it does not create any new cause of action and framing of further issues would not arise.

¹ (2009) 14 SCC 525

12) For the aforesaid reasons, the Civil Revision Petition is allowed and the trial Court is directed to receive the additional written statement filed by the petitioner. There shall be no order as to costs.

13) Miscellaneous Petitions, if any, pending in this Civil Revision Petition, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

21.12.2016
gkv

