

THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT

CIVIL REVISION PETITION No. 4152 of 2016

ORDER:

This civil revision petition is filed against the order dated 06.05.2016 in I.A.No.413 of 2014 in O.S.No.25 of 2011 on the file of the Court of Junior Civil Judge, Piduguralla, Guntur District.

2. Heard Sri Mehar Kumar, learned counsel for the petitioner, and Smt. Marella Radha, learned counsel for respondents 1 and 2.

3. Learned counsel for the petitioner/plaintiff submits that the petitioner filed the suit mentioned above against the respondents for declaration of title over the plaint schedule property on the ground that the petitioner had purchased the property from the 4th respondent on 05.02.2011 through a registered sale deed and before that the 4th respondent purchased from the 3rd respondent on 03.01.2011. The 1st and 2nd respondents herein entered appearance and filed written statement on 28.06.2011 itself, whereas, the other defendants have also filed their response to the plaint averments. Thereafter, the suit was posted for trial and the trial commenced. The petitioner completed his evidence and the matter was posted for defendants' evidence.

4. Learned counsel for the petitioner further submits that, at that stage, the 1st and 2nd respondents filed I.A.No.413 of 2014 for counter claim in the form of Additional Written Statement under Order VIII Rule 9 of CPC, and the trial Court, without giving cogent reasons allowed the said I.A., by order dated 06.05.2016. Learned counsel submits that under Order VIII

Rule 9, there is a bar on filing subsequent pleadings, however, the Court may, at any time, require a written statement or additional written statement from any of the parties, and accordingly fix a time of not more than 30 days for presenting the same.

5. The respondents filed their written statement on 28.06.2011 and the I.A.No.413 of 2014 was filed on 05.12.2014, i.e., after more than 2 ½ years. Rules 6 and 9 under Order VIII read as under:

Rule 6: Particulars of set-off to be given in written statement:-

(1) *Wherein a suit for the recovery of money the defendant claims to set-off against the plaintiff's demand any ascertained sum of money legally recoverable by him from the plaintiff, not exceeding the pecuniary limits of the jurisdiction of the Court, and both parties fill the same character as they fill in the plaintiff's suit, the defendant may, at the first hearing of the suit, but not afterwards unless permitted by the Court, present a written statement containing the particulars of the debt sought to be set-off.*

(2) *Effect of set-off:- The written statement shall have the same effect as a plaint in a cross-suit so as to enable the Court to pronounce a final judgment in respect both of the original claim and of the set-off; but this shall not affect the lien, upon the amount decreed, of any pleader in respect of the costs payable to him under the decree.*

(3) *The rules relating to a written statement by a defendant apply to a written statement in answer to a claim of set-off.*

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.*

6-B. Counter-claim to be stated:- *Where any defendant seeks to rely upon any ground as supporting a right of counter-claim he shall, in his written statement, state specifically that he does so by way of counter-claim.*

6-C. Exclusion of counter-claim:- *Where a defendant sets up a counter-claim and the plaintiff contends that the claim thereby raised ought not to be disposed of by way of counter-claim but in an independent suit, the plaintiff may, at any time before issues are settled in relation to the counter-claim, apply to the Court for an order that such counter-claim may be excluded, and the Court may, on the hearing of such application make such order as it thinks fit.*

6-D. Effect of discontinuance of suit:- *If in any case in which the defendant sets up a counter-claim, the suit of the plaintiff is stayed, discontinued or dismissed, the counter-claim may nevertheless be proceeded with.*

6-E. Default of plaintiff to reply to counter-claim:- *If the plaintiff makes default in putting in a reply to the counter-claim made by the*

defendant, the Court may pronounce judgment against the plaintiff in relation to the counter-claim made against him, or make such order in relation to the counter-claim as it thinks fit.

6-F. Relief to defendant where counter-claim succeeds:- *Wherein any suit a set-off or counter-claim is established as a defence against the plaintiff's claim, and any balance is found due to the plaintiff or the defendant, as the case may be, the Court may give judgment to the party entitled to such balance.*

6-G. Rules relating to written statement to apply:- *The rules relating to a written statement by a defendant shall apply to a written statement filed in answer to a counter-claim.*

Rule 9: 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.*

6. Vide the I.A was filed on 05.12.2014, the respondents sought to lay a counter-claim by way of filing additional written statement, whereas the original written statement was filed by them on 28.06.2011. Pursuant to order dated 01.09.2016 passed in the present civil revision petition, the 1st and 2nd respondents have filed counter affidavit which is taken on record. It is stated in the counter affidavit that the Court below has categorically recorded a finding that the I.A. was filed on 05.12.2014, by which date, the trial has not been commenced and the petitioner/plaintiff commenced his evidence on 14.07.2015. It is further recorded that the respondent has not sought for amendment of pleadings by putting-forth their counter claim in

addition to already existing pleadings in the written statement which are not inconsistent and contrary to the existing pleadings in the written statement.

7. Learned counsel appearing on behalf of the respondents submits that it is just and necessary to take cognizance of the counter claim and it will facilitate to decide the main issue between the parties, when the title of the plaint schedule property itself is in issue. He further submits that the Court below condoned the delay in disposing the I.A. in view of the mistake and oversight of the ministerial staff of the Court in not placing the I.A. before the Court at the time of advancing the arguments. The Court below further made it clear that no prejudice would be caused to the petitioner/plaintiff, since he would also be given an opportunity to adduce evidence and put forth the material before the Court to disprove the case by framing additional issues. Learned counsel further submits that the Court below has categorically recorded a finding that I.A. was filed on 05.12.2014, which is much earlier than the filing of evidence affidavit by the petitioner/plaintiff on 14.07.2015. Apart from that, the delay in disposal of the I.A. is only purely on the mistake and oversight of the ministerial staff of the Court in placing the I.A. before the Court.

8. I have heard learned counsel for the parties.

9. It is not in dispute that the respondents had filed written statement by disclosing their defence on 28.06.2011. The learned trial Court, while disposing of the application, has recorded that the defence of the petitioner cannot be considered for the reason that the I.A. in question was filed on 05.12.2014 by which date the trial in the suit was not commenced and the

petitioner/plaintiff commenced his evidence on 14.07.2015. The said opinion is contrary to the record, for the reason that the respondents filed written statements on 28.06.2011, whereby disclosed the defence. Accordingly, the suit commenced and thereafter, as per Order VIII Rule 9, there is bar in filing additional written statement without permission of the Court and that too the Court has to satisfy that the additional ground is necessary to adjudicate the suit. The additional ground is certainly not permissible if the said ground totally changes the defence and prejudices the rights of the plaintiff.

10. In the written statement filed on behalf of the 2nd defendant, it is stated that the father of the defendants 1 to 3 i.e., Thota Raji Reddy had executed a Will in favour of the defendants 1 to 3 dated 22.10.1971, and at the time of execution of the Will, the 1st defendant was in his mother's womb and the defendants 2 and 3 were minor children. He died on 14.08.1991, and in the Will, he clearly stated that after his death if his wife gives birth to a male child, $\frac{1}{2}$ of the properties shall go to the female children, i.e., 2nd and 3rd defendants and the remaining $\frac{1}{2}$ in favour of the male child, i.e., the 1st defendant. In that view, he clearly stated that, after his death, if his wife gives birth to a male child, $\frac{1}{2}$ of the property shall go to the 2nd and 3rd defendants and the remaining portion shall go to the male child i.e., the 1st defendant. He clarified that the 1st defendant doesn't have any kind of transferable right over the plaint schedule property.

11. The plaint schedule property is *lis pendence* property. The 2nd and 3rd defendants filed a partition against the 1st defendant on the file of the Senior Civil Judge, Gurazala in O.S.No.131 of 2009 and the same is

pending and posted for judgment. The sale deed executed by the 1st defendant in favour of the 4th defendant carries no weight in the eye of law as it is null and void and the sale deed executed by the 4th defendant in favour of the plaintiff is also null and void. Therefore, it does not create any right in favour of the plaintiff or the 4th defendant.

12. In the affidavit filed on behalf of the petitioners in the I.A., it is stated that they mentioned several grounds in their written statement on which the suit is liable to be dismissed but after filing the written statement the Senior Civil Judge, Gurazala, has passed preliminary decree dated 11.07.2012 in their favour in O.S.No.131/2009. The 3rd respondent against the 2nd respondent/1st defendant, for the partition of the properties, came to their father from their grandfather upon a Will executed by their father. The plaint schedule property is the 3rd item of the plaint schedule property in the above mentioned partition suit. Subsequently, they filed final decree partition in I.A.No.1110 of 2012 in O.S.No.131 of 2009 which was pending disposal as the Senior Civil Judge, Gurazala, has passed the preliminary decree after filing original written statement, however, they failed to mention the same in their written statement as one of their defence to resist the claim of the plaintiff. The allegations mentioned in the additional written statement give rise to filing counter claims. Thus, it would be inconsistent or contrary to the allegations made by the respondents in the original written statement. Thus, prejudice will cause to the petitioner.

13. If the version of the learned counsel for the respondent is accepted as it is, that there is no inconsistency or contrariness with the stand taken in

the original written statement, then what is the purpose of filing an additional written statement? In additional written statement, it is stated that it is false to contend that the plaintiff purchased the site from the 4th defendant for a valuable consideration under a registered sale deed dated 05.02.2011 and obtained possession of the said site on that date itself and since then the plaintiff has been enjoying the said site with full rights. It is further stated that Thota Raji Reddy executed a registered Will on 22.10.1971 in favour of the 1st defendant. At the time of execution of the Will, the 1st defendant was in womb. Thota Raji Reddy died on 14.08.1991. After the death of his father, the said Will came into force, later the 1st defendant got possession of the plaint schedule property and enjoying the same with absolute rights. But, the 1st respondent has no transferable right over the plaint schedule property. The plaint schedule property is an ancestral property and also it is *lis pendence* property.

14. Accordingly, the cause of action for the counter claim is a continuous one and it is recognised and confirmed by the Senior Civil Judge, Gurazala, in O.S.No.131/2009 filed by the defendants 2 and 3, by passing preliminary decree dated 11.07.2012, whereby allotted 1/3rd share each to the defendants 2 and 3 in the plaint schedule property. It is clear that from Rules 6 and 9 under Order VIII of CPC that after commencement of the suit, additional ground is not allowed, however, if the Court feels that additional statement is required on any issue, the Court can certainly direct the same, but that occasion was not before the trial Court in the present case. Subsequent events as alleged were in the knowledge of the respondents somewhere in the year 2012 and at that very point of time, the

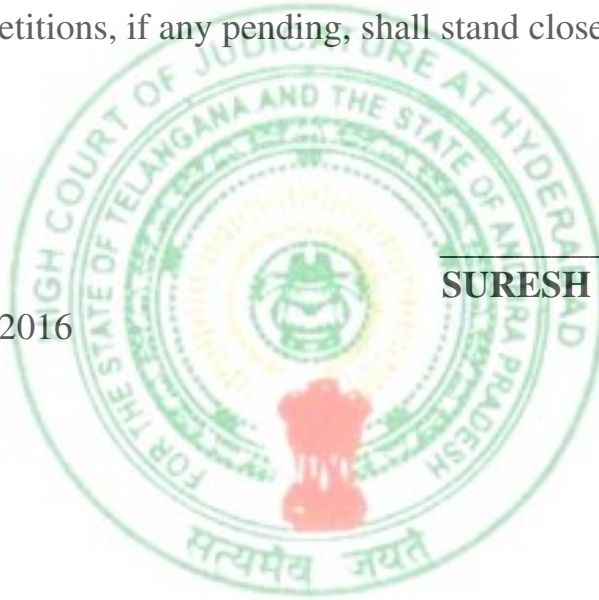
respondent ought to have filed the application and additional written statement. Therefore, I.A. filed by the respondent for additional written statement and counter claim belatedly is not permissible under the provisions mentioned above.

15. In view of the above, the impugned order dated 06.05.2016 passed in I.A.No.413 of 2014 in O.S.No.25 of 2011 on the file of the Court of Junior Civil Judge, Piduguralla, Guntur District, is hereby set aside.

16. The civil revision petition is accordingly allowed. No costs.

Miscellaneous petitions, if any pending, shall stand closed.

06th September, 2016
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SURESH KUMAR KAIT, J

THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT**CIVIL REVISION PETITION No. 4152 of 2016**

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