

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No.1015 of 2014

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, by the unsuccessful petitioner/1st defendant is directed against the order dated 28.01.2014 of the learned Principal Senior Civil Judge, Nellore passed in I.A.no.301 of 2013 in O.S.no.301 of 2010 filed under Order VI Rule 17 read with Section 151 of the Code of Civil Procedure, 1908 requesting to permit the petitioner/1st defendant to amend his written statement as stated in the affidavit and the petition.

2. I have heard the submissions of the learned counsel for the revision petitioner/1st defendant ('the 1st defendant', for brevity) and the learned counsel for the sole respondent/plaintiff ('the plaintiff', for brevity). I have perused the material record.

3. At the outset, be it noted that the 2nd defendant is not made a party to the interlocutory application filed by the 1st defendant for amendment of his written statement and also to this Civil Revision Petition. Be that as it may.

4. The case of the 1st defendant in support of his request for permission to amend the written statement, in brief, is as follows:-

The plaintiff and the defendants 1 and 2 are brothers. The plaintiff brought the suit for partition of the plaint schedule properties. Having received summons in the above suit and on the 2nd defendant approaching the 1st defendant, the 1st defendant had accompanied him to the office of an advocate and signed the Vakalat and some typed papers in the office of the advocate of the 2nd defendant *bona fide* believing his brother-the 2nd defendant. Later, the 2nd defendant had informed the 1st defendant that he would look after the case and that he would see that the suit schedule properties would be partitioned among the three brothers. Believing the

words of the 2nd defendant, the 1st defendant did not pursue the matter further. Later, the plaintiff had informed the 1st defendant that the 2nd defendant had cheated him by obtaining his signatures on the written statement, wherein, a defence favourable to the 2nd defendant was urged. The plaintiff had further advised the 1st defendant to take no objection vakalat from his counsel. At that time, the 1st defendant came to know that he had signed the Vakalat and had entrusted his case to a junior counsel in the office of the advocate for the 2nd defendant. On that, the 1st defendant had obtained no objection Vakalat from his counsel, who is under the influence of the 2nd defendant, and had filed the present application for amendment of his written statement. By the time the matter came to the knowledge of the 1st defendant, the trial in the suit had made progress and the evidence on the side of the plaintiff was closed; and the 2nd defendant was examined in part as DW1. The averments in paragraph number 4 of the original written statement are not made on the instructions of the 1st defendant. Therefore, he is advised to file the application for amendment of his written statement. And, hence the 1st defendant is constrained to file the application seeking amendment of his written statement.

5. The plaintiff had reported no counter and had not resisted the application filed by the 1st defendant for reasons which are obvious. Though the 2nd defendant was not added as a party to the application, the 2nd defendant had filed a counter denying the allegations and resisting the application. On merits, the trial Court had dismissed the application filed by the 1st defendant seeking amendment of his written statement. Therefore, the 1st defendant had filed this revision petition.

6. The learned counsel for the revision petitioner/1st defendant, while narrating the facts which are stated *supra*, would contend that in the facts and circumstances stated it is clear that the 2nd defendant had cheated the 1st defendant and had got filed the written statement favourably to his defence

and that on realisation of the true facts, the 1st defendant had sought amendment of his written statement to bring to the notice of the Court his true defence and that despite the plaintiff reporting no counter to the said application, the Court below had erroneously dismissed the application filed by the 1st defendant for permission to amend his written statement.

7. I have bestowed my attention to the facts and I have given detailed and thoughtful consideration to the submissions.

8. In the first place it is to be noted that the 1st defendant, in his interlocutory application filed for permission to amend his written statement, did not implead the 2nd defendant as a party. Therefore, the application filed without impleading a necessary party is itself defective and hence, the petition is liable for dismissal on that ground alone. Be that as it may. The 1st defendant, in his original written statement, had taken a specific stand to the following effect: "He has nothing to do with the suit schedule property of the 2nd defendant. The plaint schedule property absolutely belonged to the 2nd defendant as the same was given to the 2nd defendant by all the family members in the year 1995 under a document. Since then, the 2nd defendant alone is entitled to the plaint schedule property.' Further, in paragraph number 6 of the original written statement, the 1st defendant had also stated that this defendant prays to dismiss the suit with costs. Be that as it may; the proposed amendment, which the 1st defendant now proposes to introduce in his written statement, is as follows:-

"Now the proposed amendment sought by the petitioner is to remove para numbers 3, 4, and 6 of written statement and insert para No.3 that "the averments in para No.3 of the plaint are true". In Para No.4, "It is true the father of the plaintiff and defendants died in the year 1992. It is also true he purchased the plaint schedule vacant site and he is the absolute owner thereof. It is also true as the father of these parties died intestate in the year 1992 the GPA, which was executed by him dt.18.03.1989 is also stands cancelled automatically. It is also true the plaintiff and defendants alone are jointly entitled for the plaint schedule site each at 1/3 share as the daughters were sufficiently paid at the time of their marriages. It is true the defendant No.2 created some forged documents and trying to alienate the plaint schedule property to appropriate the sale proceeds. The alleged Memorandum of agreement dt.18.10.1995 is a fabricated document crated by the 2nd defendant and it is not true correct and binding upon this defendant. Any settlement made by the 2nd defendant in favour of his wife is not

true and correct and not binding upon this defendant”. In the place of para No.6 after deleting earlier pleading to dismiss the suit, the proposed amendment is as follows:- “This defendant prays the Hon’ble Court may pleased to allow the suit by partition the suit schedule property into three equal shares by metes and bounds and to allot one such share to this defendant.”

[Reproduced verbatim]

9. Thus, by way of the proposed amendment, the 1st defendant wants to withdraw his defence originally taken in the original written statement, which is favourable to the 2nd defendant and intends to now support the case of the plaintiff. In fact, in the proposed amendment it is stated that the 1st defendant prays to decree the plaintiff’s suit for partition of the plaint schedule properties into three shares by metes and bounds and to allot one such share to the 1st defendant. Thus, the 1st defendant, by way of the proposed amendment intends to take a stand which is totally opposite to his defence already taken in the original written statement and is consequently withdrawing the defence, which is favourable to the 2nd defendant. The 1st defendant while stating that the 2nd defendant had cheated him and got filed through him a written statement favourable to his defence, would further state that he came to know about the same on being informed by the plaintiff. He also pleads that the plaintiff advised him to change his counsel. The said interlocutory application is filed without impleading the 2nd defendant as a party to the application. Thus, it would appear that the instant application for amendment of the written statement was filed by the 1st defendant at the behest/command of the plaintiff. In any view of the matter, the conduct of the 1st defendant in filing the application without impleading the 2nd defendant as a party to the application is clearly *mala fide* and not *bona fide*. It is well-settled that the amendment sought for, if permitted, is likely to cause serious injustice or prejudice to the other side, such amendment shall not be permitted. The trial Court, having observed in its order that the explanation offered by the 1st defendant for seeking amendment is not a plausible explanation and that by way of the proposed amendment he cannot be permitted to change his

defence and introduce a pleading, which is quite inconsistent with the original defence in the original written statement, had dismissed the application of the 1st defendant. In fact, the order impugned, on a perusal, would also disclose that after the evidence of the plaintiff was closed, the 1st defendant did not adduce any evidence and the 2nd defendant was examined as DW1. By an amendment an admission in the original pleading cannot be permitted to be taken away. In the facts and circumstances of the case and in view of the fact that a party cannot be permitted to withdraw admissions in his pleadings and introduce an altogether inconsistent defence to the disadvantage of one of the other parties to the suit, this Court is satisfied that the Court below is justified in dismissing the application filed by the 1st defendant seeking amendment to the original written statement by introducing a plea which is totally inconsistent with the defence in the original written statement.

10. Viewed thus, this Court finds that the order impugned in the revision brooks no interference.

11. In the result, the Civil Revision Petition is dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this revision, shall stand closed.

M.Seetharama Murti, J

06th April, 2016
Bvv