

HON' BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No.3552 of 2016

ORDER:

This revision is filed under Article 227 of the Constitution of India, challenging the order dated 05.07.2016 passed by the IV Additional District Judge, Nellore in I.A.No.426 of 2016 in O.S.No.4 of 2009. Petitioner is the 2nd defendant in the above suit.

2. The 2nd defendant filed I.A.No.426 of 2016 under Section 151 of the Code of Civil Procedure (for short 'C.P.C.') seeking to receive the additional written statement. By order dated 05.07.2016, the Court below dismissed the said I.A. Aggrieved by the same, the 2nd defendant preferred this revision.

3. The brief facts are that the plaintiff filed the said suit for specific performance of agreement of sale dated 08.02.2008 executed by the 1st defendant, the father of the 2nd defendant. When the suit is at the stage of evidence of the plaintiff, the said I.A. is filed by the 2nd defendant with the averments that in the closed room of his father, he found a registered settlement deed dated 27.12.2008 settling the suit schedule property in his favour and also two non-judicial stamp papers worth of Rs.10/- dated 19.05.2008, which show that the 1st defendant was ready and willing to fulfill his part

of promise and it was the respondent/ plaintiff, who did not come forward to Registrar Office to execute the sale deed in his favour.

4. The said I.A. was resisted by the respondent/ plaintiff on the ground that the plea to file additional written statement virtually amounts to resile the admission on his part earlier and his father's part. Admittedly, in the written statement filed earlier, the executing of the registered settlement deed dated 27.12.2008 was not pleaded and the same is brought into existence only for the purpose of defeating the suit claim.

5. After considering the respective claims, the Court below dismissed the application on the ground that the petitioner/ 2nd defendant cannot take contrary pleas in the written statement.

6. The learned counsel for the petitioner/ 2nd defendant contended that it is well settled by the catena of decisions of the Supreme Court that the defendant is entitled to take alternative/inconsistent pleas unlike plaintiff, who has to come out with a definite case. Except the ground stated above, there is no other reason assigned by the Court below for dismissing the application to receive the additional written statement. He also placed reliance on the decisions of the

Supreme Court in *Firm Srinivas Ram Kumar v. Mahabir Prasad*¹, *Baldev Singh v. Manohar Singh*², *Usha Balashaheb Swami v. Kiran Appaso Swami*³, *Revajeetu Builders and Developers v. Narayanaswamy and Sons*⁴ and *Olympic Industries v. Mulla Hussainy Bhai Mulla Akberally*⁵, to support his case that amendment to the written statement can be allowed at any stage and further defendant is entitled to take inconsistent/alternative pleas and there is no prohibition as such. Learned counsel also would point out that the 2nd defendant was impleaded as a party respondent in the suit only on 31.03.2015 on the demise of his father/1st defendant and immediately on receipt of suit summons, petitioner filed his written statement. In that view of the matter, there is also no delay in filing the written statement, which was filed on 13.10.2015, and as soon as petitioner came into possession of the registered sale deed dated 27.12.2008 and two non-judicial stamp papers, he filed the said I.A. seeking to receive additional written statement and hence, there are no laches on the part of the petitioner.

7. On other hand, the learned counsel for the respondent/plaintiff would submit that allowing the said I.A.

¹ AIR 1951 SC 177

² 2006 (6) SCC 498

³ 2007(5) SCC 602

⁴ 2009(10) SCC 84

⁵ 2009(15) SCC 528

would virtually amount to retracting from the admission made by the 1st defendant in the earlier written statement. He would also submit that the 1st defendant in his written statement did not mention either about the execution of registered settlement deed dated 27.12.2008 or two non-judicial stamp papers dated 19.05.2008, apart from not whispering about his being present before the Sub-Registrar Office on 19.05.2008, hence, the amendment at this belated stage, particularly to fill up the lacunae after commencement of the trial is impermissible. The learned counsel also placed reliance on Yellapu Damayanthi v. Polamarasetti Hemalatha⁶.

8. Heard and perused the record.

9. On perusal of the record shows that though the suit is of the year 2009, the petitioner/ 2nd defendant was brought on record on 31.03.2015 and he filed the written statement on 13.10.2015, wherein, para-6 reads as under:

“Further this defendant humbly submits that on 07-05-2008 the plaintiff waited at Sub-Registrar’s office at Nellore along with the remaining sale consideration and waited upto 5.00 PM from morning 9.30 am are not true and the plaintiff is put to strict proof of the same. The deceased defendant no.1 is not aware and not informed by the plaintiff in respect of the execution of the sale deed in his favour in respect of the date of the execution of the sale deed on 07-5-2008. Further there is no prior

⁶ 2011(4) ALD 627

information to the deceased defendant no.1 that the plaintiff will assemble at the Sub-Registrar's office at Nellore along with the remaining sale consideration on that alleged date. As there is no prior information in writing or oral by the plaintiff, the deceased defendant no.1 has not taken any steps in respect thereof."

10. In the written statement, the plea which has been taken is only with respect to the absence of the plaintiff being present on 07.05.2008 and it is not in relation to the date 19.05.2008. The material on record discloses that the plaintiff/respondent, by notice dated 08.05.2008, required the 1st defendant to be present on 19.05.2008 at the Sub-Registrar's office to execute document. In other words, the 1st defendant was expected to be present before the Sub-Registrar's office on 19.05.2008. The amendment which is now sought to be made by way of additional written statement is in relation to the said aspect of 1st defendant being present before the Sub-Registrar's office on 19.05.2008 and also to bring on record the Registered Settlement Deed dated 27.12.2008 executed in favour of the 2nd defendant/petitioner herein. One of the pleas which the petitioner had taken in the original written statement is that in spite of best efforts made on behalf of the 1st defendant seeking the plaintiff to perform his part of the contract, the plaintiff failed to perform his part of the contract and, on

account of pressing financial needs, the 1st defendant became sick, bed ridden and suffered a lot both mentally and physically and died due to tension and depression. Due to ill-health and depression, the 1st defendant did not inform or handover the documents in his possession and the same were found only when the petitioner/2nd defendant opened the room, which was being occupied by his father. The reasons for delay in seeking amendment or filing additional written statement have to be established. It is evident that the petitioner filed the written statement on 13.10.2015 and the amendment petition appeared to have been filed in early part of 2016 as the very impugned order in I.A. itself is dated 05.07.2016 i.e. within a span of about nine months. In this view of the matter, the aspect that the petitioner approached the Court at the earliest point of time cannot be denied. In all the judgments cited by the petitioner, the sum and substance of the law laid down is that the amendments to the pleadings can be allowed at any stage as long as they are relevant and aid in disposal of the case. However, requirement for allowing the amendment is that the parties seeking amendment should satisfy the Court about the due diligence and further the proposed amendment was on account of certain aspects coming to their knowledge which were not within their

knowledge on the earlier occasion. The judgments cited by the learned counsel for the respondent/ plaintiff also, so far as law is concerned, are on the same lines. It is clear that the Court is conferred with power, at any stage of the proceedings, to allow alteration and amendments of the pleadings if it is of the view that such amendments are necessary for determining the controversy between the parties. The proviso to Order VI Rule 17 C.P.C., however, provides that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to a conclusion that in spite of due diligence, the party could not collected the materials for amendment before the commencement of trial. In the present case, the facts on record justify amendment being allowed, particularly, considering date on which the written statement was filed by the petitioner on his being made as party defendant and the plea which he had taken in the original written statement that his father was sick and bed- ridden and in the process he had no knowledge about the said documents and he came into possession of the same only recently.

11. In the circumstances and considering the fact that the trial has commenced, the Civil Revision Petition deserves to be allowed, however, on payment of costs of Rs. 15,000/ -.

12. Accordingly, the Civil Revision Petition is allowed subject to payment of costs of Rs.15,000/- (Rupees Fifteen thousand only) within 15 days to the respondent/ plaintiff from the date of receipt of a copy of this order. Needless to mention that the petitioner is at liberty to file rejoinder to the plaint and the same shall be considered by the Court below.

13. As a sequel, miscellaneous petitions, if any, shall stand closed.

Date:18-11-2016
pab

CHALLA KODANDA RAM, J

