

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 3986 of 2017

ORDER:

- 1) Assailing the order, dated 11.07.2017, passed in I.A.No.394 of 2017 in O.S.No.123 of 2007 on the file of the Principal Senior Civil Judge, Chittoor, wherein an application filed under Order VIII Rule 3 (A) and Section 151 C.P.C. to receive the additional written statement was rejected, the present Civil Revision Petition is filed.
- 2) The respondent herein filed O.S.No.123 of 2007 seeking specific performance of contract. 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 to receive additional Written Statement. The averments in the affidavit filed in support of the application would show that, recently the defendants traced one promissory note executed by the plaintiff and her father, promising to pay the agreement amount at the time of registration. The enquiries made by the defendants reveal that the plaintiff created collusive agreement of sale with his father without paying any sale consideration. It is urged that the petitioner was not aware of the execution of agreement of sale dated 06.07.2006, as he was declared as major recently, filed the present petition.

3) A counter came to be filed by the plaintiff stating that the defendants wanted to change their pleadings after the cross-examination of PW.2. The suit is filed in the year 2007 and the trial commenced long back. It is her case that filing of additional written statement after commencement of trial was equivalent to amendment of pleadings. It is stated that when the Court directed the defendants to lead evidence on condition, they came up with the present petition only to drag on the proceedings.

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 to receive additional written statement.

6) Order VIII Rule 9 of C.P.C. permits the defendant to file subsequent pleadings after getting leave of the court. For better appreciation, order VIII Rule 9 of C.P.C. is extracted, which is as under:

“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.”

7) 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.

8) 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.

9) In *Baldev Singh and others v. Manohar Singh and another*² the Apex Court dealing with the said aspect held as under:

“9. Order 6 Rule 17 of the Code of Civil Procedure deals with amendment of pleadings which provides that the Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties. A bare perusal of this provision, it is pellucid that Order 6 Rule 17 of the Code of Civil Procedure consists of

¹ (2009) 14 SCC 525

² (2006) 6 SCC 498

two parts. The first part is that the Court may at any stage of the proceedings allow either party to amend his pleadings and the second part is that such amendment shall be made for the purpose of determining the real controversies raised between the parties. Therefore, in view of the provisions made under Order 6 Rule 17 of the CPC it cannot be doubted that wide power and unfettered discretion has been conferred on the Court to allow amendment of the pleadings to a party in such manner and on such terms as it appears to the Court just and proper. While dealing with the prayer for amendment, it would also be necessary to keep in mind that the Court shall allow amendment of pleadings if it finds that delay in disposal of Suit can be avoided and that the suit can be disposed of expeditiously. By the Code of Civil Procedure (Amendment) Act, 2002 a proviso has been added to Order 6 Rule 17 which restricts the Courts from permitting an amendment to be allowed in the pleadings either of the parties, if at the time of filing an application for amendment, the trial has already commenced. However, Court may allow amendment if it is satisfied that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

15. Let us now take up the last ground on which the application for amendment of the written statement was rejected by the High Court as well as the Trial Court. The rejection was made on the ground that inconsistent plea cannot be allowed to be taken. We are unable to appreciate the ground of rejection made by the High Court as well as the Trial Court. After going through the pleadings and also the statements made in the application for amendment of the written statement, we fail to understand how inconsistent plea could be said to have been taken by the appellants in their application for amendment of the written statement, excepting the plea taken by the appellants in the application for amendment of written statement regarding the joint ownership of the

suit property. Accordingly, on facts, we are not satisfied that the application for amendment of the written statement could be rejected also on this ground. That apart, it is now well settled that an amendment of a plaint and amendment of a written statement are not necessarily governed by exactly the same principle. It is true that some general principles are certainly common to both, but the rules that the plaintiff cannot be allowed to amend his pleadings so as to alter materially or substitute his cause of action or the nature of his claim has necessarily no counterpart in the law relating to amendment of the written statement. Adding a new ground of defence or substituting or altering a defence does not raise the same problem as adding, altering or substituting a new cause of action. Accordingly, in the case of amendment of written statement, the courts are inclined to be more liberal in allowing amendment of the written statement than of plaint and question of prejudice is less likely to operate with same rigour in the former than in the latter case.

16. This being the position, we are therefore of the view that inconsistent pleas can be raised by defendants in the written statement although the same may not be permissible in the case of plaint. In the case of *M/s. Modi Spinning and Weaving Mills Co.Ltd. & Anr. Vs. M/s. Ladha Ram & Co.*³ [(1976) 4 SCC 320], this principle has been enunciated by this Court in which it has been clearly laid down that inconsistent or alternative pleas can be made in the written statement. Accordingly, the High Court and the Trial Court had gone wrong in holding that defendants/ appellants are not allowed to take inconsistent pleas in their defence.”

10) As seen from the record, O.S.No.123 of 2017 came to be filed seeking specific performance of an agreement of sale. The trial Court rejected the request on the ground that the defendants

³ (1976) 4 SCC 320

introduced new facts which are contrary to the earlier pleadings and the same came to be filed after a lapse of 10 years from the date of filing of the suit and 9 years after filing of the written statement.

11) It is to be seen that in the original written statement it was stated that there was collusion between the plaintiff and the first defendant and pursuant to the same an agreement of sale was created. In the additional written statement, it is stated that the enquiries with the second attesor revealed that document dated 06.07.2006 was obtained in collusion and without paying any sale consideration. He claims to have recently traced a pronote executed by the plaintiff and PW.2, pertaining to suit transaction, promising to pay money at the time of registration. The affidavit is silent as to when the said document was traced. Except stating that it was traced recently, no further details are given.

12) It is to be noted here that in the cross-examination, PW.2 was confronted with a promissory note dated 06.07.2006 (Ex.B1) executed by plaintiff and PW.2, wherein he admitted the execution of Ex.B1-promissory note. It was also elicited that after repayment, the same was not taken back and the amount was discharged on the date of execution of Ex.A1.

13) From the above, it is clear that the plea of the petitioner was with regard to the execution of promissory note dated 06.07.2006. Suggestions as to execution of Ex.B1 by PWs.1 and 2 were given, which were admitted. Now a different plea is sought

to be introduced that even part of sale consideration was not paid to the first defendant, which was not the case of the petitioner earlier. Moreover, the suit is of the year 2007, and now additional written statement is sought to be filed 9 years later, that too after the cross-examination of PW.2 on Ex.B1, by taking a new plea, which cannot be accepted.

14) For the aforesaid reasons, I do not see any merits in the Civil Revision Petition and accordingly, the same is dismissed. There shall be no order as to costs.

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

05.09.2017
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JUSTICE C. PRAVEEN KUMAR

