

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 5933 of 2016

ORDER:

1) Assailing the order, dated 22.09.2016, passed in I.A.No.1060 of 2015 in O.S.No.314 of 2010, on the file of the Additional Senior Civil Judge, Chittoor, wherein a petition filed under Section 151 of C.P.C. to permit the 3rd defendant to file additional written statement was allowed, the present Civil Revision Petition came to be filed by plaintiff Nos.2 to 4 under Article 227 of the Constitution of India.

2) The petitioners are plaintiff Nos.2 to 4, 1st respondent herein is the 3rd defendant, 3rd and 4th respondents are defendant Nos.2 and 3 before the trial Court. For the sake of convenience, the parties herein after be referred to as arrayed in the suit.

3) The facts in issue are as under:

The 2nd respondent herein along with the petitioners filed O.S.No.314 of 2010 seeking cancellation of sale deed dated 22.01.2010 executed by the 1st defendant in favour of the 3rd defendant in respect of plaint schedule property and cancellation of registered sale deed dated 03.04.2010 executed by 2nd defendant in favour of the 3rd defendant in respect of plaint schedule properties and for consequential reliefs. In the said suit the trial has commenced and PW.1 filed his evidence affidavit in lieu of chief examination. When the matter is posted for cross-

examination of PW.1, the 3rd defendant filed an application under Section 151 of C.P.C. to permit him to file additional written statement.

4) A counter came to be filed by the plaintiffs contending that the chief affidavit of PW.1 was filed in the month of July, 2015 and the matter was adjourned from time to time for cross-examination of PW.1. When the Court insisted the defendants to cross-examine PW.1, they have filed the present application only to protract the matter. The 3rd defendant filed the present application without giving any valid reasons and that too at a belated stage.

5) After considering the rival submissions made, the trial Court allowed the petition. Challenging the same, the present Civil Revision Petition came to be filed.

6) One of the main grounds urged by the learned counsel for the petitioner is that the trial Court erred in entertaining an application under Section 151 of C.P.C. when the Civil Procedure Code provides a remedy under a particular provision.

7) A perusal of the material placed before the Court does not anywhere indicate that the 1st respondent herein bye-passing the provisions made for filing additional written statement by invoking Section 151 of C.P.C. On the otherhand, proper application was made before the Court but only a wrong provision of law has been

mentioned. That by itself cannot be a ground to reject the application.

8) In *Venture Global Engineering v. Satyam Computer Services Limited and another*¹ the Apex Court in Para No.22 observed as under:

“22. We are of the opinion that in dealing with a prayer for amendment, Courts normally prefer substance to form and techniques and the interest of justice is one of most relevant considerations. Therefore, if a party is entitled to amend its pleadings, having regard to the justice of the case, the right of the party to amend cannot be defeated just because a wrong Section or a wrong provision has been quoted in the amendment petition. The approach of the High Court in this case, in rejecting the appellant's prayer for amendment, inter alia, on the ground that a wrong provision has been quoted in the amendment petition, is obviously a very hyper technical one. Mr. Salve rightly did not even try to defend the impugned order on the aforesaid technical ground adopted by the High Court.”

9) Similarly in *Padmasen v. The State of A.P.*² the Apex Court observed as under:

“The inherent powers of the Court are in addition to the powers specifically conferred on the Court by the Code. They are complementary to those powers and therefore it must be held that the Court is free to exercise them for the purpose mentioned in Section 151 of the Code when the exercise of those powers is not in any way in conflict with what has been expressly provided in the Code or against the intentions of the Legislature. It is also well recognized that the inherent powers is not to be exercised

¹ (2010) 6 ALD 15 (SC)

² (1961) Cri.L.J. 322

in a manner which will be contrary to or different from the procedure expressly provided in the code.”

10) Venture Global Engineering case (1 supra) was a case where a petition filed for amendment of pleadings by quoting a wrong provision of law. The Apex Court held that if a party is entitled to amend its pleadings, having regard to the justice of the case, the right of the party to amend cannot be defeated just because a wrong Section or a wrong provision has been quoted in the amendment petition. In the instant case also the defendants filed an application seeking permission to file additional written statement by quoting under Section 151 C.P.C. The trial Court allowed the said petition on the ground that the pleas taken in the additional written statement will not affect the rights of the plaintiffs since they are having opportunity to cross-examine the 3rd defendant on the said aspects. In view of the judgments referred to above and taking into consideration the facts and circumstances of the case, I see no illegality or irregularity in the order passed by the trial Court.

11) Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs. Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

JUSTICE C. PRAVEEN KUMAR

03.04.2017

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