



statement was that the suit is not maintainable as there is inter se serious dispute between the persons claiming to be landlords of the suit property. Defendant No.2 also relied on public notices issued by M/s. Malvi Ranchhoddas & Co. Advocates. Defendant No.2 further contended that the plaintiffs are not the landlords of the suit property and consequently, the Small Causes Court has no jurisdiction to entertain and try the suit. In short, he submitted that defendant No.2 did not deal with the grounds of eviction made out by the plaintiffs in the suit and the written statement was restricted only to maintainability of the suit. He submitted that in paragraph 6 of the written statement, it was asserted that rest of the written statement is without prejudice to the contentions raised earlier. In paragraph 12, it is asserted that defendant No.2 is not filing any detailed written statement in view of his contention that the plaintiffs are not landlords of the suit property. In paragraph 13, it is asserted that it may not be treated as defendant No.2 has admitted contentions and statements made in the plaint which have not been specifically dealt with in the written statement.

4. Mr. Daiya has invited my attention to paragraph 1 of application Exhibit 51. Earlier Advocate bona fide believed after instructions from him that that short written statement was to be filed dealing with the ownership of the plaintiffs. Defendant No.2 changed the earlier Advocate and engaged the present Advocate sometime in January, 2018. Immediately, the present application is filed in February, 2018. He submitted because of the mistake committed by the earlier Advocate, defendant No.2 should not suffer. He further submitted that under Order-VIII, Rule-9 of the Code of Civil Procedure, 1908 (for short 'C.P.C') with the permission of the Court, additional written statement can be filed by the defendant. He, therefore, submitted that the impugned order may be set aside by allowing application Exhibit 51.

5. On the other hand, Mr. Vyas supported the impugned order. He submitted that during pendency of the suit, defendant No.1 expired and the said fact was brought to the notice of the plaintiffs by defendant No.2. In pursuance thereof, applications at Exhibit 9 and 26 were taken out and amendment was carried out on 10<sup>th</sup> December, 2013 as per the orders dated 18<sup>th</sup> October, 2013 and 7<sup>th</sup> December, 2013. Defendant No.2 has filed written statement on 29<sup>th</sup> January, 2015. Mr. Vyas invited my attention to reply filed by the plaintiffs to application Exhibit 51 and submitted that affidavit of examination-in-chief was already filed by the plaintiffs. Admissibility of documents was also decided and the witness of the plaintiffs was under cross-examination. At that time, the present application is made for filing additional written statement which is wholly mis-conceived and bad in law. He, therefore, submitted that no case is made out for interfering with the impugned order.

6. I have considered the rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. As mentioned earlier, amendment to the plaint is carried out on 10<sup>th</sup> December, 2013. Defendant No.2 filed written statement on 29<sup>th</sup> January, 2015. The only contention raised in the application Exhibit 51 is that earlier Advocate bona fide believed after instructions from defendant No.2 that written statement should be restricted only on the question of ownership of the plaintiffs. Defendant No.2 changed the earlier Advocate and engaged the present Advocate. Though during the course of hearing, it is pointed out that the present Advocate is engaged in January, 2018, the application is totally silent on this aspect. Be that as it may. Even if it is accepted that the present Advocate is engaged in January, 2018, the reasons set out in the application Exhibit 51 cannot be accepted to grant permission to defendant No.2 to file additional written statement.

7. It is material to note that though in the written statement dated 29<sup>th</sup> January, 2015, defendant No.2 contended that there is no relationship of landlord and tenant and the Small Causes Court has no jurisdiction to entertain and try the suit, no application for rejection of the plaint under Order-VII, Rule-11 (d) of C.P.C was made. Even defendant No.2 did not file application under Order-XIV, Rule-2 (2) of C.P.C for framing preliminary issue and deciding the same. In the impugned order, the learned trial Judge noted that the matter is part heard and 10 years old. The plaintiffs have already filed affidavit of examination-in-chief of their witness and thus, the trial has commenced.

8. Order-8, Rule-9 of the C.P.C reads thus;

**“8. New ground of defence.\_**

**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”.*

A perusal of the above extracted provision shows that the defendant cannot as a matter of right insist that he should be permitted to file additional written statement. The Courtss in given case can consider giving permission to file additional written statement. After perusing the application, I am of the opinion that no case is made out for exercising discretion in permitting defendant No.2 to file additional written statement. Hence, the Petition fails and the same is dismissed.

9. It is, however, expressly made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in the

impugned order, affecting the decision of the case, may be set forth as a ground of objection in memorandum of Appeal as contemplated by Section 105(1) of C.P.C.

**[R.G. KETKAR, J.]**