

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP. No.1646 of 2018

O R D E R:

Heard counsel for the revision petitioner and Sri K.V.S.Vishnuram, Counsel for the respondent.

2. Petitioner is defendant in the suit O.S.No.55 of 2009 on the file of the Court of Junior Civil Judge, Nagari, filed for declaration of title and perpetual injunction.

3. Thereafter, I.A.No.257 of 2012 was filed for amendment of the plaint by the respondent. This application was ordered and neat copy of the amended plaint was filed in 2016.

4. However, petitioner did not file any additional written statement. Thereafter, evidence on both sides was adduced and was closed.

5. Alleging that his Advocate fell sick and taking continuous treatment at CMC, Vellore and could not attend the Court and instruct him to file additional written statement for the newly amended pleadings; and stating that his Advocate requested him to engage another advocate, and the new advocate advised him to file an additional written statement, petitioner filed I.A.No.232 of 2017 under Order VIII Rule 9 CPC seeking leave to file additional written statement.

6. This application was opposed by the respondent contending that this application has been filed to drag on the

matter by changing different advocates and illness of the earlier advocate is not true.

7. By order dt.05.02.2018, the Court below dismissed I.A.No.232 of 2017. It held that when the case was coming up for the petitioner's side evidence, he has filed I.A.No.232 of 2017 under Order VIII Rule 9 CPC; that Order VI Rule 17 CPC and Order VIII Rule 9 CPC are different; that petitioner's application under Order VIII Rule 9 CPC cannot be treated as one under Order VI Rule 17 CPC; that inconsistent pleadings cannot be permitted by way of filing additional written statement; and provisions of Order VIII Rule 9 CPC cannot be taken recourse for raising new pleas, particularly, at the stage when the suit is coming for hearing.

8. Assailing the same, this Revision is filed.

9. Counsel for petitioner contended that the petitioner had never argued before the lower Court to apply Order VI Rule 17 CPC, that additional written statement was also filed along with the application under Order VIII Rule 9 CPC, that there is no pleading inconsistent with the earlier written statement, that the petitioner only wants to deny the allegations leveled in the amended plaint and has no intention to lead further evidence; and merely because the application under Order VIII Rule 9 CPC, which was filed when the case came up for petitioner's evidence, was decided after the evidence of the

defendant's side was closed, it cannot be dismissed, particularly, when the petitioner's counsel fell sick and could not advise the petitioner to file additional written statement.

10. Counsel for the respondent however supported the order passed by the Court below.

11. From the facts narrated above, it is clear that though the suit is of the year 2009, the plaint was amended vide order dt.13.10.2016 in I.A.No.257 of 2012 and amended copy of the plaint was only filed thereafter.

12. No doubt, amended written statement was not filed to this amended plaint, but the reason assigned by the petitioner is that his counsel fell sick and did not advise him to do so and he had to engage a different advocate, who advised him to file an additional written statement.

13. Admittedly, I.A.No.232 of 2017 under Order VIII Rule 9 CPC was filed by the petitioner along with the additional written statement, after completion of the respondent's evidence and before petitioner's evidence commenced. It appears that said application was kept pending and was decided only after the evidence on the defendant's side was closed and the matter was posted for arguments.

14. The Court below cannot keep said application filed on 17.11.2017 pending till 05.02.2018, and in the meantime

complete the trial and then dismiss the said application on the ground that it was filed at a belated stage. Such a course adopted by the Court below would cause serious prejudice to the petitioner.

15. Once the respondent/plaintiff was directed to amend the plaint, petitioner/defendant should have opportunity to meet the pleading in the amended plaint and the said opportunity cannot be denied.

16. It is the case of the petitioner that he does not want to lead any further evidence but he wants the additional written statement to be on the record for denying the case set out in the amended plaint by the respondent. Therefore, the respondent cannot plead any prejudice either.

17. Accordingly, this Civil Revision Petition is allowed; the order dt.05.02.2018 in I.A.No.232 of 2017 in O.S.No.55 of 2009 of the Junior Civil Judge, Nagari is set aside; the said I.A. is allowed and the Court below is directed to receive the additional written statement filed by the petitioner and then proceed to decide the suit, since the petitioner does not wish to lead any further evidence. No order as to costs.

18. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

M.S.RAMACHANDRA RAO, J

10th September, 2018.

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