

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL REVISION PETITION No. 2675 OF 2018

ORDER:

This civil revision petition is filed by the defendant, under Article 227 of the Constitution of India, challenging order dated 18.09.2017 passed in I.A.No.115 of 2015 in O.S. No.113 of 2012 on the file of the Principal Junior Civil Judge Court, Bapatla.

2. Heard the learned counsel for both the parties.

3. Now, the point for consideration is

"Whether there is any illegality, irregularity or impropriety in the impugned order?"

4. A perusal of the record reveals that the respondent filed O.S. No.113 of 2012 on the file of the Principal Junior Civil Judge Court, Bapatla, against the petitioner for declaration of title and recovery of possession of suit schedule property. During pendency of the suit, the defendant filed I.A.No.115 of 2015 under Order VI Rule 17 of CPC for amendment of written statement. The respondent filed counter *inter alia* contending that the petition is not maintainable either on facts or in law. The trial Court, after affording a reasonable opportunity to both parties, dismissed the petition. Hence, the revision.

5. In the written statement, the petitioner has taken a specific plea that she got the suit schedule property from her maternal uncle by name Nuthi Srinivasa Rao, who is husband of the respondent. The petitioner filed I.A.No.115 of 2015 seeking amendment of the written statement by taking a plea that she got the suit schedule property from her maternal grandfather by name

Nuthi Ramaiah. In a suit for declaration, the plaintiff may succeed or fail basing on the strength or weakness of his/her own case. The petitioner earlier has taken the specific plea in the written statement that she got the suit schedule property from her maternal uncle but now she is intending to take the plea that she got the suit schedule property from her maternal grandfather. One K.Annapurnamma is mother of the respondent and the said K.Annapurnamma is sister of mother of the petitioner. It is needless to say that the defendant is entitled to take inconsistent pleas. It is settled principle of law that the defendant is not entitled to take mutually self destructive pleas. If the petitioner is permitted to amend the written statement, it would certainly amount to withdrawing the admission made by her earlier in the written statement. To substantiate his argument, learned counsel for the petitioner has drawn the attention of this Court to the decision in **Vimal Chand Ghevarchand Jain vs. Ramakant Eknath Jajoo**¹, wherein the Hon'ble apex Court it was held at paragraph No.16 as follows:

16. The First Appellate Court, however, having regard to the amendment carried out in the written statement setting up a totally inconsistent plea from the one taken before the learned Trial Court by the respondent posed a question as to whether the respondent has discharged the burden placed on him.

For the said purpose, critical analysis of the prevarication of the stand taken by the respondent from stage to stage also became relevant. It is true that when a pleading is amended, it, subject to just exceptions, takes effect from the date when original one is filed. It is also true that the Appellate Court, in exercise of its discretionary jurisdiction and subject to fulfilment of the conditions laid down under Order 41 Rule 27 of the Civil Procedure Code, may allow the parties to adduce additional evidence.

Pleadings of the parties, it is trite, are required to be read as a whole. Defendants, although are entitled to raise alternative and inconsistent plea but should not be

¹ 2009 (5) SCC 713

permitted to raise pleas which are mutually destructive of each other. It is also a cardinal principle of appreciation of evidence that the Court in considering as to whether the deposition of a witness and/or a party is truthful or not may consider his conduct. Equally well settled is the principle of law that an admission made by a party in his pleadings is admissible against him *proprio vigore*.

As per the principle enunciated in the above judgment, a party to the proceedings is not entitled to take mutually self destructive pleas. The facts of the present case are almost identical to the facts of the case cited *supra*. After commencement of trial, a party to the proceedings has to satisfy the proviso to Order VI Rule 17 of CPC. The affidavit filed by the defendant before the trial Court is bereft of basic ingredients of Order VI Rule 17 of CPC. Viewed from this angle also, the petition filed by the defendant is not maintainable.

6. The trial Court considered the facts of the case on hand in the light of the proviso to Order VI Rule 17 of CPC and dismissed the petition. The trial Court has assigned reasons much less cogent and valid reasons. I am fully endorsing with the findings recorded by the trial Court. There is no illegality or irregularity which warrants interference of this Court by exercising jurisdiction under Article 227 of the Constitution of India and the revision is liable to be dismissed.

7. The civil revision petition is accordingly dismissed. Pending miscellaneous petitions, if any, in this civil revision petition shall stand dismissed in consequence. No costs.

T.SUNIL CHOWDARY, J.

Date: 10.12.2018
JSK