

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

C.R.P. No.689 of 2016

ORDER:

The revision petitioner is defendant No.1 in O.S.No.661 of 2008 on the file of the Principal Senior Civil Judge, Nellore. The said suit is filed for declaration of title claiming by the plaintiff as the absolute owner of the plaint schedule property. The defendants filed their written statement in opposing the suit claim. As per the written statement, defendant No.1, while minor, filed a suit in O.S.No.440 of 1991 on the file of III Additional Junior Civil Judge, Nellore, for permanent injunction against the plaintiff herein and the same was decreed on 28.08.1998 and the defendant in O.S.No.440 of 1991 preferred an appeal in A.S.No.77 of 1998 before IV Additional District Judge, Nellore, and the said appeal was ended in dismissal on 06.09.2005. While so, the plaintiff in the present suit O.S.No.661 of 2008 illegally occupied the plaint schedule property as defendant No.1 is the physically handicapped person unable to resist the acts of the plaintiff herein. With these averments in the affidavit petition defendant No.1 filed I.A.No.912 of 2012 for amendment of the written statement under Order VIII Rule 6(A) C.P.C. to incorporate the counter-claim to seek for declaratory relief in favour of defendants to avoid the multiplicity of proceedings.

2. The plaintiff in O.S.No.661 of 2008 supra as a respondent to I.A.No.912 of 2012 supra before the trial Court opposed by filing counter with the contest that it is false to allege that the plaintiff herein illegally trespassed or occupied the property or the defendant earlier ever in possession of the property and in fact, in O.S.No.440 of 1991 the present plaintiff herein as defendant and her husband Hasarathaiah were in possession of the property and the Advocate Commissioner's report also speaks the same. The present defendant, amendment petitioner to the written statement, placed his claim on the Will, said to have been executed by Chukka Pushpamma died in the year 1991. The present petition for amendment of written statement for making of counter-claim is barred by law and the same is liable to be dismissed.

3. The lower Court by the impugned order observed that as per the amended Order VI Rule 17 C.P.C. the person, who seeks amendment of pleadings, must show in spite of due diligence he could not raise the matter before commencement of trial, without which not entitled for amendment as a matter of course and the proposed amendment to seek relief of declaration as defendant No.1 is the absolute owner and to direct the plaintiff herein to vacate the plaint schedule property by delivery of vacant possession to him is untenable.

4. Having referred several expressions, it is observed that the purpose of amendment is to shorten the litigation and avoid the multiplicity of proceedings. The proposed amendment cannot be allowed to the prejudice of other side and without saying the proposed amendment necessary for the effective adjudication of *lis*. The earlier round of litigation in O.S.No.440 of 1991 and A.S.No.77 of 1998 is not an unknown fact and even the written statement of the defendants in the present suit O.S.No.661 of 2008 refers the same in disputing the title of plaintiff and the present suit by the defendants and thereby, the amendment cannot be allowed in dismissal of application before the lower Court.

5. The grounds in the Civil Revision Petition are that the dismissal of application by the lower Court is contrary to law, weight of evidence, non-application of mind and unsustainable and in failure to consider the very object and scope of the proposed amendment no way barred by time and that too the proposed amendment is essential to amend the written statement to put a quitus to the *lis* and thereby, the Civil Revision Petition to be allowed.

6. Learned counsel for the revision petitioner reiterated the same, whereas the learned counsel for the plaintiff-revision respondent supported the order of lower Court.

Order VIII Rule 8 C.P.C. speaks any ground of defence which has arisen after the institution of suit or the presentation of a written statement claiming a set-off [or counter-claim] may be raised by the defendant or plaintiff as the case may be, in his written statement. Order VIII Rule 9 C.P.C. speaks 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. Even this provision along with Order VI Rule 17 C.P.C. is amended in 2002 and as per the C.P.C. (Amendment) Act, 2002 it speaks additional pleading by way of defence to set-off or counter-claim can be permitted and otherwise the Court may at any time require a written statement or additional written statement from the parties and fix time. This provision cannot be read in isolation to, but for together with Order VI Rule 17 C.P.C. The counter-claim by the defendant should be raised as per Order VIII Rule 6A C.P.C. is in the very written statement and the counter-claim shall not exceed pecuniary limits of the jurisdiction of the Court and such counter-claim shall have the same effect as a cross-suit for final judgment, both in the

original claim and the counter-claim, and such counter-claim of defendant to be filed before he filed his defence, the plaintiff may file written statement to the said counter-claim of defendant as the counter-claim shall be treated as plaint. From the above, it is crystal clear that the counter-claim shall be filed is at or before filing of the written statement and not later. No doubt, in *Madanapalle Municipality v. Syed Ahamad*¹ it is observed that the counter-claim can be permitted even after written statement, but not after commencement of evidence. It is not even the case of defendant that the issue raised in the counter-claim is a subsequent event to the filing of written statement and there is no explanation for not raising the counter-claim while filing of the written statement.

7. Having regard to the above, apart from lack of due diligence also one of the concept, there is nothing to interfere with the dismissal order of trial Court in I.A.No.912 of 2012 in O.S.No.661 of 2008, but for remedy of the defendant, if at all available is to file an independent suit if at all required in pursuant to the earlier decree and judgment in O.S.No.440 of 1991.

¹ 2003 (1) ALD 729

Accordingly, and in the result, the Civil Revision Petition is disposed of. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

Dr. B. SIVA SANKARA RAO, J

31.01.2018
MVA

