

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

CIVIL REVISION PETITION NO.5793 OF 2018

Between:

Smt. Gandla Laxmi and others .. Petitioners

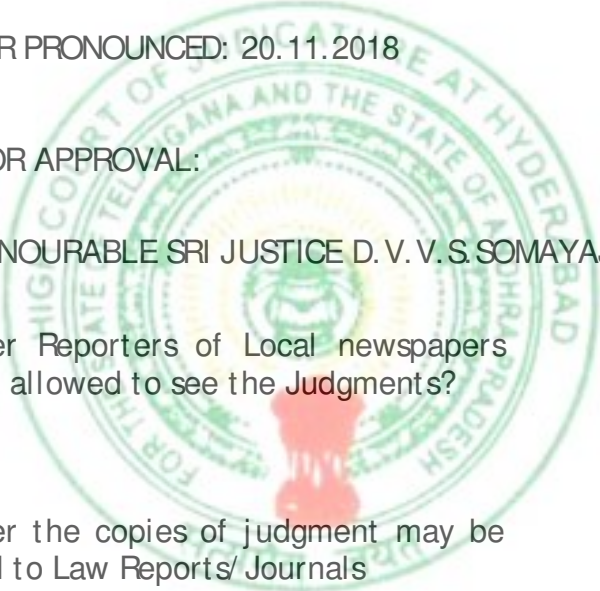
And

Smt. G.Ashavva and others .. Respondents

DATE OF ORDER PRONOUNCED: 20.11.2018

SUBMITTED FOR APPROVAL:

HONOURABLE SRI JUSTICE D. V. V. S. SOMAYAJULU

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- 1 Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/ No
 - 2 Whether the copies of judgment may be marked to Law Reports/ Journals Yes/ No
 - 3 Whether Their/ your Ladyship/ Lordship wish to see the fair copy of the Judgment? Yes/ No

* THE HONOURABLE SRI JUSTICE D. V. V. S. SOMAYAJULU
CIVIL REVISION PETITION NO.5793 OF 2018

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Between:

Smt. Gandla Laxmi and others .. Petitioners

And

Smt. G.Ashavva and others .. Respondents

Counsel for the Petitioners : Sri K.Ravi Mahender

Counsel for the respondents : None appears

< Gist:

> Head Note:

? CITATIONS:

1. (2014) 4 SCC 196
- 2, 2004(5) ALD 561



THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

C.R.P.NO.5793 OF 2018

ORDER:-

This revision petition is filed questioning the order, dated 25-07-2017, passed in I.A.No.312 of 2015 in O.S.No.5 of 2015 by the Principal Junior Civil Judge, Kamareddy, rejecting the application filed seeking permission to file a rejoinder to the written statements of the defendant Nos.1, 3 and 4.

2. The lower court, after hearing both the learned counsel, came to a conclusion that there is no specific averment in the petition as to why a rejoinder is required to be filed. The court also held that there are no new grounds taken in the written statements warranting the filing of a rejoinder. Therefore, the court negated the request for filing rejoinder. Questioning the same, the present revision petition is filed.

3. This court ordered notice to the respondents. The learned counsel for the petitioners took out personal notice to the respondents and filed a memo with USR No.95191 of 2018, dated 15-11-2018. The learned counsel also filed a letters received by the petitioners from the Postal department, which shows that all the respondents were

served. There is no appearance by any of the respondents. Hence, this matter is taken up for hearing.

4. The learned counsel for the petitioners argued that the suit is filed for declaration of title and for delivery of vacant possession. A specific allegation is made that the father of the 2nd and 3rd defendants and the husband of the 1st defendant is the village Sarpanch who manipulated the Gram Panchayat records and encroached into the site. In reply to this, a written statement is filed adverting to the various allegations made and asserting that there was an exchange of property between the husband of the 1st plaintiff and the husband of the 1st defendant. Based on this exchange of property, the defendants are claiming their rights in the property.

5. As the issue of exchange of property is raised for the first time in the written statements, the learned counsel submits that they had to file a rejoinder and, therefore, they made an application, I.A.No.312 of 2015, seeking permission of the court to file a rejoinder to the written statements. This application was rejected by the court below on the ground that no grounds are made out.

6. The learned counsel for the petitioners drew the attention of this court to para.3 of the affidavit that is filed and pointed out that it is very clearly averred therein that

the theory of exchange is created and is baseless. He also points out that in para.6, it is clearly mentioned that the written statement incorporates false and baseless allegations. The learned counsel also drew the attention of this court to the matters stated in the rejoinder that is proposed to be filed wherein it is very clearly averred that the alleged exchange of immovable property did not take place at all and that the entire theory of exchange is false. It is also specifically stated in the proposed rejoinder that there is no documentary evidence supporting the alleged theory of exchange and hence the same cannot be accepted. The learned counsel for the petitioners points out that both in the affidavit filed and in the proposed rejoinder, the need for making the additional pleading is clearly visible. Therefore, he questions the basis on which the order was passed. The learned counsel for the petitioners also relies upon a judgment of the Hon'ble Supreme Court in *Prathima Chowdhury vs. Kalpana Mukherjee and another*⁽¹⁾ and argues that pleadings will only be completed after the appellant/plaintiff could file a rejoinder. In addition, a learned single judge of this court in a decision reported in *T.Lakshman Kumar vs. G.Laxmikantha Reddy*⁽²⁾ has clearly held that while filing of a rejoinder is not a matter of right, still where the averments in the

¹ (2014) 4 SCC 196

² 2004(5) ALD 561

written statement filed have the effect of cutting at the root of the plaintiff's case or would non-suit the plaintiff, then the plaintiff would be entitled to file a rejoinder. Para.8 of the said judgment is reproduced hereunder:-

“The necessity to allow subsequent pleadings emanates from the basic principle that no party to the proceeding can lead evidence, unless a foundation is laid for it, in the pleadings. In the ordinary course, a plaintiff would be permitted to lead evidence to substantiate the contents of the plaint; and the defendant, the contents of the written statement. Where, however, apart from denying the contents of a plaint, the defendant pleads certain additional facts, a necessity will arise for the plaintiff to deal with the same. If the additional facts pleaded by the defendant are such, as would belie the contention of the plaintiff, or result in denial of relief to him, the plaintiff has to be given the right to put forward his version, in relation to the same. Such a facility cannot be extended to the plaintiff by permitting him to amend the plaint, because of the fact that the circumstances, under which a pleading can be amended, are totally different. Since the corresponding version of the plaintiff in replication to the additional facts, pleaded by defendant, does not form part of the pleadings in the plaint, the plaintiff would be disabled from leading evidence on those aspects, and to that extent the adjudication would be incomplete”.

This judgment, in the opinion of this court, is squarely applicable to the facts of this case. If the theory of exchange that is advanced by the defendants is found to be correct, the plaintiffs may lose their case. Therefore, this court is of the opinion that the plaintiffs are entitled to question this pleading which can non-suit their case totally.

In that view of the matter, this court is of the opinion that in the facts and circumstances of this particular case, filing of rejoinder is warranted. Therefore, this court holds that the order passed in I.A.No.312 of 2015 in O.S.No.5 of 2015 by the Principal Junior Civil Judge, Kamareddy is not correct and deserves to be set aside.

Accordingly, the Civil Revision Petition is allowed and the court below is directed to receive the rejoinder and proceed with the trial without in any way being influenced what is stated in this order. No costs. The interlocutory applications pending, if any, shall stand closed in consequence.

20-11-2018
TSNR

D.V.S.S.SOMAYAJULU,J

