

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

C.R.P.No.219 OF 2015

ORDER:

This revision petition is filed under Article 227 of the Constitution of India challenging the order dated 03.06.2014 in I.A.No.216 of 2014 in O.S.No.323 of 2004 passed by the X Additional District and Sessions Judge, Visakhapatnam at Anakapalle dismissing the petition filed under Order VIII Rule 9 and Section 151 C.P.C.

The petitioner impleaded as the 4th defendant in the suit in the year 2010 before the Court below, the plaint was amended five years prior to his impleadment, added item Nos.8 to 12 of schedule property on 02.12.2005, the plaint copy was served and written statement was filed on 10.02.2011. But it is the contention of the petitioner in the affidavit that he filed written statement in the suit, recently when the counsel for the petitioner preparing for cross examination, it is noticed that Item Nos.8 to 12 of schedule property were subsequently added the schedule of property annexed to the plaint. As original plaint copy alone was served on the petitioner, the petitioner could not answer the claims in respect of Item Nos.8 to 12 and sought permission of the Court to file additional written statement.

The respondents filed counter denying material allegations *inter alia* contending that Item Nos.8 to 12 were

added to the schedule of property annexed to the plaint five years prior to impleadment of this petitioner and the petitioner filed written statement on 10.02.2011 in detail. Thereafter, the petitioner was examined in chief on 13.10.2012 by filing affidavit under Order XVIII Rule 4 C.P.C. in lieu of examination in chief. As such the petitioner is disentitled to file additional written statement and prayed for dismissal of the petition.

Upon hearing argument of both counsel, the trial Court dismissed the petition holding that no acceptable material is placed on record to establish that original plaint copy before adding Item Nos. 8 to 12 to the schedule of property annexed to the plaint was served on the petitioner and thereby, the petitioner is disentitled to seek leave of the Court to file subsequent pleadings and dismissed the petition.

Aggrieved by the impugned order, the present revision petition is filed reiterating the same ground i.e. non service of amended plaint after adding Item Nos. 8 to 12 of schedule properties after impleadment of the petitioner.

The petitioner was impleaded as the 4th defendant on 16.11.2010. Admittedly, the amendment was ordered on 02.12.2005 adding Item Nos.8 to 12 of schedule properties. Thus, it is clear that from the date of impleadment of the petitioner as the 4th defendant, the plaint was already amended and amended plaint was also filed before the Court

below and even after impleading the petitioner as the 4th defendant consequential amendment was carried out in compliance of Rule 28 of the Civil Rules of Practice and filed fair copy of the plaint as required under the procedure being followed by the Courts.

Order VIII Rule 9 C.P.C. deals with subsequent pleadings. According to Rule 9 of Order VIII C.P.C., 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.

Right to file subsequent pleadings would normally arise only when an application was filed under Order I Rule 10(2) C.P.C. or under Order VI Rule 17 C.P.C. or under Order XXII Rule 2 or 4 C.P.C. But the petitioner after bringing him as the 4th defendant availed the opportunity of filing written statement and thereafter, no such petitions referred above were filed. Therefore, in normal course, the petitioner is not entitled to file such subsequent pleadings by invoking Order VIII Rule 9 C.P.C. But in the present case, it is the contention of the petitioner that before amended plaint was served on 02.12.2005 on the petitioner, he failed to file

written statement with regard to Item Nos.8 to 12 of schedule property. If really, the original plaint was served on the petitioner without consequential amendment of plaint after impleading the petitioner by exercising power under Order I Rule 10(2) C.P.C., the contention of the petitioner can be accepted. But here, the petitioner was impleaded as party i.e. 4th defendant, and served copy of the plaint. In such a case, the contention of learned counsel for the petitioner is not acceptable and the Court below also rightly concluded that no acceptable material is produced that the plaint as amended by order dated 02.12.2005 was not served on the petitioner, though the petitioner was arrayed as the 4th defendant in the main suit. Such finding of the Court below is to be accepted. It is brought to the notice of this Court that the petitioner filed a memo adopting the written statement and additional written statement after adding the petitioner as the 4th defendant. When the petitioner adopted the written statement and the additional written statement, the petitioner is disentitled to seek leave of this Court under Order VIII Rule 9 C.P.C. to file subsequent pleadings i.e. additional written statement. Hence, I find no error in the order passed by the Court below warranting interference of this Court by exercising power under Article 227 of the Constitution of India and consequently, it is liable to be dismissed as it is devoid of merits.

In the result, the revision petition is dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this petition shall stand closed.

M. SATYANARAYANA MURTHY,J

05.02.2018

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