

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.6187 of 2017

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed aggrieved by the order and decree, dated 28.10.2017, in I.A.No.819 of 2017 in O.S.No.236 of 2011 passed by the Senior Civil Judge, Adoni, Kurnool District.

2. Respondents Nos.1 to 4 herein, who are defendants 2 to 5 in the aforesaid suit, filed the abovementioned Interlocutory Application under Order VIII Rule 9 and Section 151 C.P.C., to permit them to file additional written statement. The Court below, after considering the entire material available on record, allowed the said application. Challenging the same, the present Civil Revision Petition is filed by the petitioner, who is plaintiff No.2 in the said suit.

3. For the sake of convenience, the parties will hereinafter be referred as they are arrayed in the aforesaid Interlocutory Application.

4. In the affidavit filed in support of the interlocutory petition filed before the Court below, it is stated that the petitioners filed written statement in the suit stating that one Seshappa and 1st defendant were allotted houses as per their entitlement at Adoni, Kurnool District; that the land shown in the plaint is not the joint family property; that at the time of filing of written statement, they engaged Sri G.Narasimhulu, Advocate, and they were not in possession of the documents; but, during the course of trial, they engaged another Advocate, who informed them that they have to file some documents to prove their case; that the petitioners traced the original Will, dated

07.06.1979, executed by their father Pedda Rudrappa in favour of their mother Eramma in respect of the suit lands; that they partitioned the landed properties orally about 25 years back during life time of their father Pedda Rudrappa; that in the said partition, they got their respective share of land, but details were not mentioned in the earlier written statement inadvertently; that now in view of tracing the Will, dated 07.06.1979, they intend to file additional pleadings regarding issuance of pattadar passbooks and title deeds in their favour, and therefore, requested to grant leave to file additional written statement under Order VIII Rule 9 C.P.C.

5. The respondents filed counter-affidavit in the said petition, denying the material allegations, *inter alia*, contending that the petitioners are not entitled to seek leave of the Court under Order VIII Rule 9 C.P.C., as the proposed additional written statement would not fall under Order VIII Rule 9 C.P.C, but it is inconsistent to the original plea raised by petitioners in the written statement and in such a case, leave cannot be granted to file additional written statement i.e., subsequent pleadings; that even in the cross-examination of witnesses, no question was put to them with regard to the proposed plea of written statement and that absolutely there are no grounds to grant permission to file subsequent pleadings under Order VIII Rule 9 C.P.C and requested to dismiss the petition.

6. Upon hearing the argument of both counsel, the trial Court came to the conclusion that the proposed plea in the subsequent pleadings is consistent with the original plea raised in the written statement filed by the petitioners and accordingly, allowed the petition. Aggrieved by the said order, the present civil revision

petition is filed by the petitioner/plaintiff No.2 raising several grounds.

7. The main ground urged by the petitioner herein/plaintiff No.2 is that the respondents herein are not entitled to raise any inconsistent pleadings on the ground that there must be consistency between the original pleadings and subsequent pleadings, which cannot be denied and requested the Court to set aside the impugned order passed by the Court below.

8. During hearing, learned counsel for the petitioner herein/plaintiff No.2 placed reliance on various judgment reported in **Heeralal v. Kalyan Mal and others**¹, **Vimal Chand Ghevarchand Jain and others v. Ramakant Eknath Jadoo**², **Gautam Sarup v. Leela Jetly and others**³, **S.D.Nagaraju and others v. Shivaganga Education and Charitable Trust (R)**⁴, **Sivagnanamoorthy v. M.Shanmugam**⁵, **Sugeeta Chhabra v. Harish Nayar**⁶, **P.T.Munichikkanna Reddy and others v. Revamma and others**⁷, **Mamidi Rajamani v. Panjala Premeela and others**⁸, **Managing Director, APSRTC, Hyderabad and others v. P.V.Surya Narayana**⁹ **and Raj Kumar Bhatia v. Subhash Chander Bhatia**¹⁰. Whereas, learned counsel for the respondents herein contended that the proposed additional written statement would not fall within the subsequent pleadings under Order VIII Rule 9 C.P.C and placed reliance on a judgment reported in **Olympic Industries v. Mulla**

¹ (1998) 1 Supreme Court Cases 278

² (2009) 5 Supreme Court Cases 713

³ (2008) 7 Supreme Court Cases 85

⁴ 2016 (4) ICC 241 (Karn.)

⁵ LAWS (MAD) 2003 817

⁶ KAWS (DLH) 2013 (1) 295

⁷ (2007) 6 Supreme Court Cases 59

⁸ 2017 (3) HLT 641

⁹ 2017 (4) ALD 733

¹⁰ 2017 Law Suit (SC) 1355

Hussainy Bhal Mulla Akberally¹¹ and requested the Court to dismiss the petition.

9. The suit is of the year 2011 and the same is pending for adjudication. The assertion of the petitioner herein/plaintiff No.2 is that the respondents are raising new pleas by way of subsequent pleadings i.e., additional written statement. But, the only question is whether permission under Order VIII Rule 9 C.P.C can be granted.

10. Pleadings are defined under Order VI Rule 1 C.P.C. 'Pleadings' shall mean plaint or written statement. Therefore, the initial or original pleadings are plaint and written statement, but the subsequent pleadings are governed by Order VIII Rule 9 C.P.C and thus, what are the subsequent pleadings are to be decided by the Court and question of filing subsequent pleadings, without permission of Court would not arise. Such subsequent pleadings may raise in several circumstances, where plaint is amended or third parties are impleaded as party to the suit or legal heirs were impleaded under Order XXII Rule 3 C.P.C or there is change in the circumstances of the case due to invoking Order I Rule 10 C.P.C or Order XXII Rules 3 and 4 C.P.C or Order VI Rule 17 C.P.C. In those circumstances, the question of filing additional written statement by way of subsequent pleadings would arise in limini. A petition can be filed to implead third parties or leave to amend plaint or implead legal heirs of deceased plaintiff/defendant during pendency of suit or proceedings or consequential amendment according to Rule 28 of the Civil Rules of Practice. But, in the present circumstances, no such contingency had arisen to permit the respondents to file appropriate subsequent pleadings i.e, additional written statement.

¹¹ 2009 Law Suit (SC) 1216

11. There is distinction between Order VI Rules 17 C.P.C and Order VIII Rule 9 C.P.C. Order VI Rule 17 C.P.C deals with Amendment of pleadings, which includes plaint or written statement at any stage of the proceedings. But, the question of filing subsequent pleadings under Order VIII Rule 9 C.P.C would arise only in the circumstances stated above. But, in stead of invoking the jurisdiction of the Court under Order VI Rule 17 C.P.C, to overcome the difficulty in view of proviso to Order VI Rule 17 C.P.C added by Act 22 of 2002, it appears, that the respondents approached the trial Court under Order VIII Rule 9 C.P.C., seeking leave to file subsequent pleadings i.e., additional written statement. Therefore, the respondents cannot be permitted to circumvent the law to bring certain facts on record invoking Order VIII Rule 9 C.P.C. When proposed written statement is not in the nature of subsequent pleadings arose in the circumstances stated above, at best, the respondents are entitled to file a petition for amendment of pleadings subject to satisfying the Court that despite due exercise of diligence, he could not bring those facts on record as required under proviso to Order VI Rule 17 C.P.C. But, he cannot circumvent law and take advantage of the situation and file subsequent pleadings i.e., additional written statement, taking inconsistent pleas, which were not raised in the initial pleadings.

12. The trial Court allowed the petition on the ground that the proposed subsequent pleas are consistent to the pleas raised in the initial pleadings i.e., written statement.

13. Learned counsel for the petitioner herein while placing reliance on the judgment reported in **Raj Kumar Bhatia's case (supra)** held

that Court below passed the impugned order permitting the respondents to file subsequent pleadings i.e., additional written statement, which cannot be permitted. However, learned counsel placed reliance on the judgment of **P.T.Munichikkanna Reddy's case (supra)** referred to above. At best, this principle will enable the respondents to permit them to raise any inconsistent pleas as the Court is of the view that the pleas of title and adverse possession are mutually inconsistent and the latter does not begin to operate until the former is renounced.

14. The contents of the judgment reported in **Sugeeta Chhabra's case (supra)** relates to Order VI Rule 17 C.P.C. This judgment is not applicable to the present facts of the case since the dispute is with regard to Order VIII Rule 9 C.P.C. In **Sivagnanamoorthy's case (supra)**, the Madras High Court adverted to an issue identical to the question involved in **Raj Kumar Bhatia's case (supra)**, permitting the defendants to raise inconsistent pleas. Similar view is expressed in **S.D.Nagaraju and others's case (supra)**. There is no quarrel with regard to law declared in various judgments in the cases referred to, which permitted to take inconsistent pleas and later judgment in **Gautam Sarup's case (supra)**, the Apex Court held that the defendant is entitled to take alternative plea. Such alternative plea, however, cannot be mutually destructive of each other. If this principle is applied to the present facts of the case, the plea raised by the respondents initially under Order VIII Rule 17 C.P.C. is totally mutually destructive with the plea proposed to be raised by the respondents in the additional written statement filed seeking leave of the Court under Order VIII Rule 9 C.P.C. Such alternative plea, which is mutually destructive of initial plea in the written statement,

cannot be permitted. Similar judgment in **Vimal Chand Ghevarchand Jain's case (supra)** is with reference to Order VI Rule 17 C.P.C and the Court held that the defendants are entitled to raise alternative and inconsistent pleas, but are not permitted to raise pleas which are mutually destructive of each other. This principle is also on the same lines of earlier judgment in **Gautam's case (supra)**.

15. In **Heeralal's case (supra)**, the Court considered the subsequent pleadings, which would amount to withdrawing the earlier admission in the initial pleadings and held that withdrawal of admission made in the written statement by the defendant which would displace the plaintiff's case and cause him irretrievable prejudice, which is not permissible.

16. In any view of the matter, the law is clear that the respondents, being defendants, is entitled to raise inconsistent pleas in the written statement, but those inconsistent pleas cannot be mutually destructive, may not be permitted in the present facts of the case.

17. The initial plea raised by this petitioner is that the suit schedule property is not joint family property and the suit was filed in 2011. Though major part of the trial has been completed, but the said plea was not raised. However, it was realized only when another Advocate was engaged, who advised to file the present petition. The proposed plea by way of additional written statement is mutually destructive of the initial plea raised in the written statement under Order VIII Rule 1 C.P.C, such plea cannot be permitted to be raised by way of additional written statement or amendment. Therefore, by applying the principles laid down in **Vimal Chand Ghevarchand Jain's case, Gautam's case and Heeralal's case**, it is difficult to

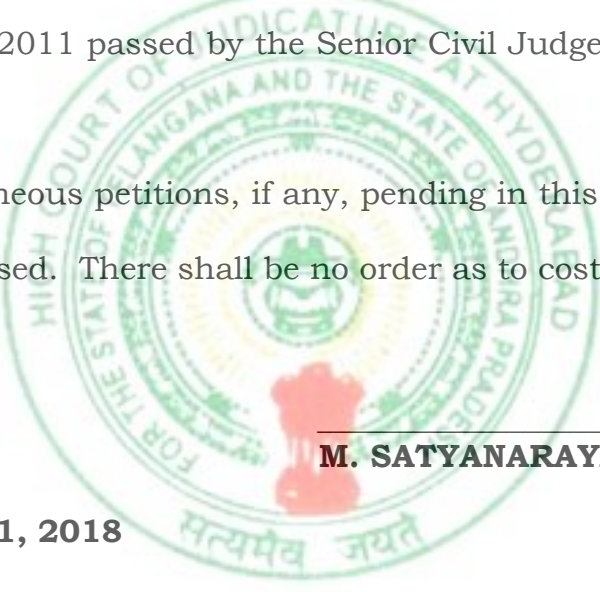
accept the contention of learned counsel for petitioner to grant leave to file additional written statement raising mutually destructive plea to the original written statement i.e., initial pleadings under Order VIII Rule 1 C.P.C. However, the question of filing subsequent pleadings in the present case does not arise for the simple reason that none of the circumstances stated permit these respondents to file additional pleadings. Learned counsel for the respondents in support of their contentions placed reliance on the Judgment of the Apex Court in **Olympic Industries' case (supra)** and the Court has considered the scope of Order VIII Rule 9 CPC and considered as to when permission is to be granted to file subsequent pleadings. But, this judgment is with reference to rent control proceedings, the principle is relevant for deciding the real controversy between the parties. Therefore, the Court held that inconsistent pleadings cannot be permitted by filing additional counter after completion of major part of the enquiry in Rent Control proceedings. But, this is not almost identical to the judgments referred in **Heeralal's case (supra)**. Moreover, in **P.A.Jayalakshmi v. H.Saradha**¹², the Court has drawn the distinction between Order VI Rule 17 C.P.C and Order VIII Rule 9 CPC. The facts of the case are almost identical to the present facts of the case, except stage of the proceedings. The petition was filed under Order VIII Rule 9 C.P.C seeking leave of the Court to file subsequent pleadings raising totally inconsistent pleas. But, the matter ultimately reached the Supreme Court and during pendency of the petition before the Apex Court, request was made to treat the petition as petition under Order VI Rule 17 C.P.C, but the Court declined to grant permission to amend pleadings treating the petition as Order VI Rule 17 C.P.C. If this principle applies to the present facts of the

¹² 2009 Law Suit (SC) 1278

case, the respondents are not entitled to seek leave of the Court to file subsequent pleadings under Order VIII Rule 9 C.P.C as there was no addition of parties or impleadment of legal heirs of any of the parties or amendment of plaint, which permits the petitioner to file the subsequent pleadings i.e, subsequent to filing of the initial pleadings of written statement under Order VIII Rule 1 C.P.C. Hence, the order passed by the trial Court is illegal and the same is liable to be set aside.

18. Accordingly, the Civil Revision Petition is allowed setting aside the order and decree, dated 28.10.2017, in I.A.No.819 of 2017 in O.S.No.236 of 2011 passed by the Senior Civil Judge, Adoni, Kurnool District.

Miscellaneous petitions, if any, pending in this revision petition shall stand closed. There shall be no order as to costs.



M. SATYANARAYANA MURTHY,J

NOVEMBER 01, 2018
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THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY



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Date:01.11.2018

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