

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.7206 of 2017

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed assailing the order, dated 03.10.2017, of the learned Additional Junior Civil Judge, Miryalaguda, passed in IA.No.72 of 2017 in OS.No.56 of 2013 filed under Order VI Rule 17 of the Code of Civil Procedure, 1908, requesting for permission to amend the written statement and insert a counter claim in the written statement.

2. I have heard the submissions of *Smt. Annapurna Sree Ram*, learned counsel for the revision petitioner-defendant, and of *Sri Kowturu Pavan Kumar*, learned counsel for the respondents-plaintiffs. I have perused the material record.

3. The parties shall hereinafter be referred to as the plaintiffs and the defendant for convenience and clarity.

4. At the outset, it is to be noted that the plaintiffs brought the suit against the defendant for perpetual injunction in respect of the plaint schedule property. The defendant is resisting the suit having filed a written statement. During the course of the trial, the defendant filed the aforesaid interlocutory application for permission to amend the written statement, i.e., to insert a paragraph in the written statement to enable the defendant to make a counter claim. That petition was resisted by the plaintiffs by filing a counter. On merits and by the order impugned in this revision, the trial Court dismissed the application of the defendant. Hence, the defendant is before this Court.

5. Before proceeding further, it is necessary to refer to the pleadings of the parties.

5.1 The case of the defendant in support of the afore-stated request, in brief, is as follows:

By virtue of an agreement of sale, dated 23.06.1993, the defendant purchased, from the plaintiffs 1 and 2 and one Palnati Sudhakar Reddy, agricultural land of an extent of Ac.5.00 guntas in Sy.No.605 situated at Miryalaguda revenue village for a valuable consideration of Rs.7,30,000/- . The defendant paid the entire sale consideration to the 1st plaintiff and the said payment was acknowledged by her. The 1st plaintiff also executed an agreement, on 24.02.1996, in favour of this defendant agreeing to the above effect. The said two original agreements of sale are with the 1st plaintiff. The photostat copies of the same are filed along with the instant interlocutory application. The defendant laid out the said land into plots and sold away to various persons. Since patta was not transferred in the name of the defendant and as the 1st plaintiff is the pattedar of the said land, the 1st plaintiff executed sale deeds in favour of such purchasers on behalf of the defendant. An extent of about Ac.0.26 guntas out of the said land was acquired by the Government for formation of a bypass road. The defendant made a representation to the Land Acquisition Officer, Miryalaguda, claiming compensation. Since the 1st plaintiff also claimed compensation, the LAO referred the matter to the Court of the learned Senior Civil Judge, Miryalaguda. The said reference is pending adjudication. The defendant alone is entitled to receive the said compensation. The 1st plaintiff or her sons have no right to receive the said compensation. While things stood thus, the plaintiffs, having suppressed the real facts, filed the above suit with a dishonest intention to unlawfully receive the compensation. The plaintiffs have no physical possession over the suit land. However, basing on invalid documents, the plaintiffs have been trying to either grab away the land of the defendant or to gain compensation unlawfully without having any right, physical possession or interest over the land. The defendant got issued a legal

notice to the plaintiffs demanding to execute a registered sale deed in his favour in respect of the proposed counter claim schedule property. The plaintiffs got issued a reply with false allegations. Hence, this defendant may be permitted to amend the written statement and incorporate a counter claim as stated in the petition list.'

5.2 The case of the plaintiffs, in brief, is this: - 'The defendant filed the subject application to amend the written statement after a gap of 24 years after purchase of the plaint schedule land. Hence, his proposed claim is barred by law of limitation. The defendant had already filed an application in I.A.no.141 of 2016 to receive on file the alleged Photostat copy of the simple sale deed, dated 23.06.1993. After hearing arguments of both the sides, the trial Court dismissed the said petition, on 02.9.2016. The averments that the defendant purchased the schedule land from the plaintiffs and another son of the 1st plaintiff and that thereafter he divided the same into house plots and sold away the same to various persons are all false. It is also false to say that the original agreements, dated 23.06.1993, and 24.02.1996, are with the 1st plaintiff. The defendant is trying to grab away the schedule land under the guise of false and fabricated documents. The defendant has no right to make a counter claim in the instant suit. The alleged counter claim is time barred. The remedy, if any, open to the defendant is to file a separate suit. When the original document being relied upon by the defendant is not with him, he cannot make a counter claim that too on the basis of photostat copies of false and fabricated documents. The defendant colluded with the land grabbers and antisocial elements. The subject suit is coming up for adduction of evidence of the defendant. The defendant is not cooperating for early disposal of the suit and is filing petitions after petitions. The petition is devoid of merit and is liable to be dismissed.'

6. At the hearing, learned counsel for the defendant while reiterating the pleaded case of the defendant further submitted as follows: 'The trial Court

erred in holding that the defendant ought to have claimed the relief of amendment of written statement for incorporating the counter claim much earlier and that the said relief claimed at the belated stage is barred by law of limitation. The order of the trial Court dismissing the petition of the defendant is unsustainable and is unjustified. The law is well settled that a request for amendment of written statement stands on a different footing than that of a request for amendment of the plaint. The issue of limitation being a mixed question of fact and law, the trial Court is debarred from dismissing the application seeking amendment of the written statement on the ground of bar of limitation. The trial Court ought to have allowed the amendment of the written statement by leaving open the issue of limitation to be decided at a later stage. Merely on the ground of delay, an application for amendment of written statement ought not to have been dismissed. The amendment is necessary to bring the correct facts to the notice of the Court and to avoid multiplicity of proceedings and to give a quietus to the *lis* once and for all. The impugned order is unsustainable under facts and law.'

7. On the other hand, learned counsel for the plaintiffs supported the order of the trial Court and *inter alia* contended as follows: 'The defendant is not entitled to seek the relief of amendment of written statement, that too for introducing a counter claim, when the suit is at the stage of adduction of evidence on the side of the defendant. The defendant earlier filed I.A.no.141 of 2016 to receive the photostat copy of the alleged simple sale deed, dated 23.06.1993. The said petition was dismissed by the trial Court, on 02.09.2016. The value of the property mentioned in the said simple sale deed is Rs.7,30,000/- . The trial Court has no pecuniary jurisdiction to entertain the said claim or counter claim. The defendant has to approach an appropriate Court and file an appropriate suit, if he so desires; but, he cannot agitate his rights in the instant suit by way of a counter claim and cannot seek specific performance of the alleged agreements of sale in this suit. The trial Court is

justified in dismissing the application of the defendant. The suit is coming up for adducing evidence on the side of the defendant. The amendment of a plaint or a written statement cannot be permitted after the issues are settled and after the commencement of the trial, in view of the *proviso* appended to Order VI Rule 17 of the Code. After a lapse of nearly twenty four years from the date of the execution of the sale deed, the present request for amendment of the written statement is being made to insert a counter claim. Such a request, which is not *bona fide* and which is highly belated, cannot be entertained and permitted. The present petition for amendment of the written statement and for adding a counter claim is not maintainable and is liable to be dismissed.'

8. I have given earnest consideration to the facts and submissions.

9. At the outset it is to be noted that the defendant filed the subject petition with a request to amend his written statement and incorporate a counter claim in the written statement. The said proposed amendments are as follows:

"Para No. A: That the defendant is seeking relief of counter claim, as the plaintiffs and second son are not willing to execute a regular registered sale deed in my favour in respect of site in plaint schedule property/counter claim schedule property.

It is submitted that the plaintiff and the second son of plaintiff, i.e., Palnati Sudhakar Reddy, S/o late Srinivas Reddy, Age: 48 years, Occ: Business and Agriculture, R/o Eedulguda, Miryalaguda have to execute a regular registered sale deed in favour of the defendant in respect of counter claim schedule property. The defendant paid entire sale amount of Rs.7,30,000/- (Rupees seven lakhs thirty thousand only) to the above said persons earlier. So no balance amount is left over to be paid by the defendant to the plaintiffs or said Sudhakar Reddy.

Para B: That the Original of above sale agreement dated 23.06.1993 and its continuous Voppudala Agreement

dt.24.02.1996 are in the custody of the plaintiffs. At the time of executing sale deeds in favour of purchasers they received the originals.

Para C: That this counter claim is within limitation.

Para D: Cause of Action arose when the defendant got issued legal notice to the plaintiffs and second son of plaintiff on 07.04.2017, when they got sent the reply on Dt.12.04.2017 and denied to execute a regular registered sale deed.

Para E: Therefore the Hon'ble Court has got ample powers to try and decide the counter claim.

Para F: That the Hon'ble Court has got pecuniary and territory jurisdiction.

Para G: The total sale consideration is Rs.7,30,000 for Ac.5.09 gts of land. The value of each Acre is Rs.1,46,000.00, per acre 40 gts for One acre. Each gunta is Rs.3650.00. For Ac.0.06 gts of site it comes to Rs.21,900.00. An amount of Rs.1466/- is paid towards court fee and the same is deposited in SBI, Vigneshwara Estates, Housing Board Branch, Miryalaguda in the A/c of Hon'ble Court. The receipt is enclosed herewith.

In prayer portion, the following sentence is to be added in addition to the earlier prayer.

'And it is further prayed that the i) counter claim of the defendant may be allowed by directing the plaintiffs and second son of plaintiff Palanti Sudhakar Reddy to register the sale deed in favour of defendant in respect of counter claim schedule property.

ii) That the plaintiffs and Palnati Sudhakar Reddy may be directed to pay costs of counter claim to the defendant in the interest of justice.'

After completion of verification para the counter claim schedule property is to be added, with verification para which is as follows:

COUNTER CLAIM SCHEDULE PROPERTY

An open place to an extent of Ac.0.06 gts in Sy.No.605/A situated at Eedulaguda locality of Miryalaguda and Mandal, Nalgonda district bearing municipal door no. 29-1213 within the following boundaries:

East	:	Internal Road
West	:	Road
North	:	Road
South	:	150 feet width road from Narketpally to Addanki"

(Reproduced verbatim)

10. Now the only short question is - Whether the application of the defendant requesting for permission to amend the written statement and incorporate the counter claim can be permitted in the facts & circumstances of the case?.

11. Admittedly, the suit for perpetual injunction is filed against the defendant by the plaintiffs, that is, the 1st plaintiff and one of her sons. The defendant having filed a written statement is resisting the suit. At a belated stage and when the suit is coming for adducing evidence on the side of the defendant, the defendant filed the interlocutory application for permission to amend the written statement and to incorporate a counter claim for the purpose of seeking a direction to execute the sale deed. In the proposed amendment, the schedule of property is confined to Ac.0.06 guntas, though according to the defendant, the agreement of sale, dated 23.06.1993, was executed in respect of Ac.5.00 guntas of land for a total consideration of Rs.7,30,000/- . The said agreement was stated to have been executed by the plaintiffs 1 and 2 along with one Palnati Sudhakar Reddy. The defendant also submits that the 1st plaintiff also executed another agreement, dated 24.02.1996, and that both the agreements of sale are with the 1st plaintiff. Thus, in the suit for perpetual injunction filed by the plaintiffs, the defendant now seeks permission to incorporate a counter claim in the written statement to enable the defendant to seek a direction to the plaintiffs and another to execute a sale deed in respect of Ac.0.06 guntas only while *inter alia* stating as follows: 'By virtue of an agreement of sale, dated 23.06.1993, the defendant purchased from the plaintiffs 1 and 2 and one Palnati Sudhakar Reddy agricultural land of an extent of Ac.5.00 guntas in Sy.No.605 situated at

Miryalaguda revenue village for a valuable consideration of Rs.7,30,000/- . The defendant paid the entire sale consideration to the 1st plaintiff and the said payment was acknowledged by her. The 1st plaintiff also executed an agreement, on 24.02.1996, in favour of this defendant agreeing to the above effect. The said two original agreements of sale are with the 1st plaintiff. The photostat copies of the same are filed along with the instant interlocutory application. The defendant laid out the said land into plots and sold away to various persons. The 1st plaintiff executed sale deeds in favour of such purchasers on behalf of the defendant. Since the patta was not transferred in the name of the defendant, the 1st plaintiff, who is the pattedar, executed registered sale deeds in favour of the purchasers. An extent of about Ac.0.26 guntas out of the said land was acquired by the Government for formation of a bypass road. The defendant made a representation to the Land Acquisition Officer, Miryalaguda, claiming compensation. Since the 1st plaintiff also claimed compensation, the LAO referred the matter to the Court of the learned Senior Civil Judge, Miryalaguda. The said reference is pending adjudication.’ In this backdrop, what is to be noted is that the Junior Civil Court, which has a pecuniary limit on its jurisdiction, cannot admittedly decide the truth, validity and binding nature of an agreement of sale in respect of Ac.5.00 guntas of land for which the consideration is more than Rs.7 lakhs. Be that as it may. No reasons or explanation is forthcoming for not making this counter claim at the time of filing of the written statement. No reasons are assigned and no explanation is offered for the delay in seeking the present amendment of the written statement. Further, though the defendant states in the proposed amendment that the value of Ac.0.06 guntas of land is Rs.21,900/- and further confined the relief in the proposed counter claim to the said extent, it is to be noted that the defendant in the prayer mentioned in the proposed counter claim, is not specifically seeking specific performance of any agreement/s of sale but is directly requesting the Court to direct the plaintiffs and the second

son of the plaintiff/ Palnati Sudhakar Reddy to register the sale deed in favour of the defendant in respect of the proposed counter claim schedule property. By means of the proposed counter claim, the defendant is not seeking the relief of specific performance specifically of the agreement of sale, dated 23.06.1993, which is executed in respect of Ac.5.00 of land and where under the consideration was more than Rs.7 lakhs; and he is blithely seeking a direction to the plaintiffs and another son of the 1st plaintiff, who is not a party to the suit, to execute a sale deed for the said limited extent of property. The other son of the 1st plaintiff against whom also a direction to execute the sale deed is being sought by means of a proposed counter claim is not a party to the present suit. No request was made to add him as a party to the suit; and, without his presence as a party to the suit, a direction for execution of sale deed is being sought even against him by means of the proposed counter claim. For all the above reasons, this Court finds that the request made at a highly belated stage for amendment of the written statement to introduce the proposed counter claim is not *bona fide* and is therefore, impermissible under facts and in law. On the above analysis, this Court holds that the trial Court is justified in holding that the proposed amendment of the written statement being sought for by the defendant to incorporate the proposed counter claim cannot be entertained and that the order impugned of the trial Court, which is sustainable both under facts and in law does not brook any interference.

12. In the result, the Civil Revision Petition is dismissed. There shall be no order as to costs.

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

27.03.2018
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M. SEETHARAMA MURTI, J