

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

C.R.P.NO.254 OF 2020

O R D E R

The respondents herein are the plaintiffs and they filed the suit in O.S.No.711 of 2010 on the file of XIII Additional District and Sessions Judge at L.B.Nagar, Rangareddy against the petitioner herein, for cancellation of agreement of sale-cum-GPA and for perpetual injunction. After the evidence has been closed, and the matter is coming up for arguments, the defendant in the suit i.e., the petitioner herein, filed I.A.No.502 of 2019 in O.S.No.711 of 2010 under Order 8, Rule 9 read with Section 151 of CPC to permit him to file additional written statement. The trial court by the impugned order and decree dated 09.12.2019, dismissed the said interlocutory application. Assailing the said order, the present revision petition is filed.

Learned counsel for the petitioner submits that the earlier counsel engaged by the petitioner in the trial court has not properly drafted the written instatement and he has not denied the specific allegations, and on coming to know about the same, petitioner filed the present application seeking to file additional written statement with new grounds i.e., by way of amendment to the earlier written statement. Learned counsel further submits that if the petitioner is not permitted to file additional written statement, he would suffer injustice. In support of his contentions, learned counsel relied on the judgments reported in *SOUNDARAJAN vs. VIJAYALAKSHMI*¹ and *MOHINDER KUMAR MEHRA vs. ROOP RANI*

¹ CRP (PD)4730 of 2014 dated 24.04.2019 Madras High Court

*MEHRA*². He submits that the court below, without considering the same, rejected the application.

In this case it is to be seen that the suit is of the year 2010, and as noted above, after both the parties leading evidence and when the matter is coming up for arguments, the present application is filed to allow the petitioner to file additional written statement, which amounts to amending the written statement. Under the proviso to Order 6 Rule 17 of CPC., application for amendment shall not be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial. The only ground taken by the petitioner in this case is that his earlier counsel has not denied the specific allegations and that he filed the written statement in a casual manner. The petitioner has signed the written statement and he cannot now plead that he is not aware of its contents and moreover he has lead evidence based on the stand in the written instatement. Further, the trial court found, that if the amendment sought for by the petitioner is allowed, it goes to the root of the matter and change the entire contentions of the defendant. The petitioner has not proved that even after exercise of due diligence he could not take the stand before the commencement of trial. Therefore, as per the proviso to Order 6, Rule 17 of CPC., the amendment cannot be allowed. The High Court of Madras in the case of Soundarajan's case (1 supra), held that "*9. All amendments of the pleadings should be allowed liberally which are necessary for determination of the real controversies in the suit provided the proposed*

² Civil Appeal No.19977 of 2017 (Arising out of SLP©.No.26695/2017) dated 11.12.2017, Supreme Court of India

amendment does not alter or substitute a new cause of action on the basis of which the original lis was raised or defence taken.” The Hon’ble Supreme Court in RAJESH KUMAR AGGARWAL 7 ORS. vs. K.K.MODI³ held that “15. The object of the rule is that the courts should try the merits of the case that come before them and should consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side.”

As noted above, by allowing the present amendment, the court below found that it would go to the root of the matter and change the entire stand of the defendant, which causes prejudice to the other side. As per the judgments, which are referred to above, and relied on by the counsel for the petitioner, the same cannot be permitted.

For the foregoing reasons, the trial court by recording cogent and convincing reasons, rejected the application of the petitioner for filing additional written statement and hence, I am view that it is not a fit case to exercise jurisdiction of this court under Article 227 of the Constitution of India, and thus the revision fails and is accordingly dismissed at the stage of admission.

Interlocutory applications pending, if any, shall stand closed. No order as to costs.

A.RAJASHEKER REDDY,J

DATE:24—02—2020
AVS

³ (2006)4 SCC 385,