

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.320 of 2020

1. Indra Devi Wife of Late Ram Lakshan Yadav Resident of Village-Bajidpur, P.S. Manigachhi, District Darbhanga.
2. Vivek Kumar Yadav @ Vivek Yadav Son of Late Ram Lakshan Yadav Resident of Village-Bajidpur, P.S. Manigachi, District-Darbhangha.
3. Madhu Kumari Daughter of Late Ram Lakshan Yadav Resident of Village-Bajidpur, P.S. Manigachi, District-Darbhangha.

... .. Petitioner/s

Versus

1. Saudagar Yadav Son of Late Sabad Lal Yadav , Resident of Village-Bajidpur, P.S. Manigachhi, District-Darbhangha.
2. Bibha Devi Wife of Late Nagendra Jha, Resident of Village-Jalwar, P.S. Simri, District-Darbhangha.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Rajesh Ranjan Mr. Shakti Suman Kumar, Advocates.
For the Respondent/s	:	Mr. Uma Shankar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

5 01-11-2022 Heard Mr. Rajesh Ranjan, learned counsel for the petitioners and Mr. Umashankar Singh, learned counsel for the respondents.

2. Petitioners are defendants in the suit and have challenged the impugned order dated 13.12.2019 by which the preliminary issue with regard to the suit being barred under Section 18 of Bihar Privileged Persons Homestead Tenancy Act (in short, 'the Act') has been decided against the petitioner/defendant.

3. The suit has been filed by the respondent/plaintiff No.1 for declaration of title, confirmation of possession as well as for permanent injunction and also for declaration that sale deed dated 22.07.2005 is null and void and is not binding upon



him.

4. The defendants filed a written statement on 11.07.2008 in which they disclosed that the suit land is in their possession by virtue of Baasgit Purcha issued in their favour *vide* Bassgit Purcha Case No. 1 of 2005-2006.

5. Thereafter, the replication was filed on behalf of the plaintiff on 18.03.2013 wherein the plaintiff alleged that Baasgit Parcha has been obtained by the defendant by playing fraud and prayed to treat this replication as part of the plaint. After filing of the replication the defendants filed a petition praying therein to frame and decide the preliminary issue first which was allowed by the trial court *vide* order dated 21.05.2012 and on 15.06.2012, a preliminary issue was framed “whether suit is barred under the Act or not and whether the suit is liable to be dismissed ? On this issued the case proceeded and was decided against the petitioners/defendants.

6. Learned counsel for the petitioners vehemently challenged the impugned order and submitted that allowing the replication itself was bad in law and was contrary to the provisions of Order 8 Rule 9 of the CPC. Therefore, deciding the preliminary issue against the petitioner is of no relevance inasmuch as according to learned counsel for the petitioner,



before filing of replication by the plaintiff no leave of the court was obtained. He further submits that the plaintiff has entirely come out with a new case by way of replication which is inconsistent with the statement made by the plaintiff in the plaint which was filed for declaration of title and for declaration of sale deed dated 22.07.2005 as null and void. He further submits that there should be harmonious construction between two provisions of the CPC i.e., Order 8 Rule 9 as well as Order 6 Rule 17 inasmuch as Order 8 Rule 9 prescribes for leave of the court before filing of the subsequent pleading and the plaintiff in order to avoid the rigors of Order 6 Rule 17 has adopted the recourse of Order 8 Rule 9 which renders the provisions of Order 6 Rule 17 redundant.

7. He further submits that if the case of fraud in obtaining Purga is taken into consideration on the basis of replication, there is no doubt that the suit is maintainable.

8. On the other hand, learned counsel appearing for the respondents submits that the issue of leave was not raised by the petitioner before the trial court and after replication having been accepted, the defendant filed a petition praying therein to frame and decide the preliminary issue as to whether the suit is barred under the 'Act' or not which has rightly been decided by



the learned trial court. He further submits that the learned court below has specifically come to the finding that the suit is maintainable inasmuch as the plaintiff makes out a *prima facie* case of lack of jurisdiction and fraud and in the replication, the learned trial court being satisfied about the pleas put forth by the plaintiff has held that the suit is not liable to be dismissed as not maintainable under the Act.

9. Further, learned counsel for the respondents relies upon a judgment of this Court passed in the case of ***Rohan Lal Choudhary v. Prem Prakash Gupta*** as reported in ***1979 BBCJ 771*** wherein under paragraphs 7 and 8, it has been held as follows:-

“7. It is not possible to accept this contention in the bald form as has been advanced by the learned counsel for the petitioner, A subsequent pleading by way of defence to a set-off or counter-claim can be filed by the plaintiff as a matter of right, but the provisions do contemplate the filing of other pleading as well but by the leave of the Court and invest the Court with the widest possible discretion. Under this rule either party may, with the leave of the Court file a supplementary written statement, but at the same time it cannot be disputed that the law does not compel the plaintiff to file any rejoinder to the allegations made in the written statement and the failure of the plaintiff to file such a rejoinder cannot be treated as an admission of the plea in the written statement. The plaintiff is entitled to join issues with the defendant with respect to all those allegations which are made in the written statement and may lead evidence in rebuttal of



those allegations notwithstanding the fact that he does not file any rejoinder. Although the procedure is well established, but nonetheless reference may be made in support of the same to two Bench decisions of the Madras High Court in the cases of Gurusanthayya v. Setra Veerayya: (AIR 1952 Mad 825) and Veerasekhara Varmarayar v. Amirthavalliammal: (AIR 1975 Mad 51).

In my opinion, it will, therefore, not be advisable to lay down as an abstract principle that under Rule 9 of Order VIII leave should be obtained, by the plaintiff to file subsequent pleading as a rejoinder to the written statement, additional written statement or the like, as this would result in lengthening the proceeding and is more likely to be abused. But at the same time in appropriate cases, if the Court feels satisfied that such a pleading is necessary, then leave can be granted. However, the Court exercising the discretion under this rule cannot permit to go on record a rejoinder which is inconsistent with the original pleading and which contains any allegation of fact inconsistent with the earlier pleading. This provision, in my view, has been made more with the purpose of filing of written statement after the stage of Order VIII, Rule 1 is over, as was the situation in the case of Kali Pado v. Surendra Nath or filing of a additional written statement where a plaint is amended, or a minor defendant attains majority and wants to file his own written statement, or a new defendant is added after the filing of the written statement. I can imagine yet another situation of filing of a subsequent pleading under the provisions of this rule by either party if it wants to bring to the notice of the Court any subsequent event having taken place, which must be allowed to do as having a bearing on the controversy in the case.

8. In the impugned order although the learned Munsif has allowed the additional pleading of the plaintiff on an erroneous ground that if the plaintiff is not allowed to file it then "the allegations made by the defendant may go unchallenged and that may prejudice the case of



the plaintiff" since the defendant has made certain allegations to which the plaintiff has got a right to controvert, sitting in the revisional jurisdiction, however I do not feel persuaded to interfere with the discretion exercised by the learned Munsif as there is an observation in the impugned order to the effect that if the allegations made by defendant were not challenged, that might prejudice the case of the plaintiff, although I do not find any discussion in the order with respect to those allegations as to how in the absence of any additional pleading by the plaintiff any prejudice would be caused to him.”

10. I have heard learned counsel for the parties and gone through the materials on record. It transpires that the preliminary issue has been decided in favour of the respondents based upon the pleading made by the respondents/plaintiff in replication. After filing of the replication by the plaintiff, the defendant filed a petition for framing a preliminary issue regarding maintainability of the suit under the Act and at that point of time, the petitioner/defendant did not raise any plea regarding acceptance of replication without having leave of the court. However, at this stage, learned counsel for the petitioner argued that without leave of the court, replication cannot be allowed.

11. This Court in the aforesaid judgment (supra) has held that it is not advisable to lay down as an abstract principle that under Rule 9 of Order VIII leave should be obtained by the



plaintiff to file subsequent pleading as a rejoinder to the written statement, additional written statement or the like, as this would result in lengthening the proceeding and is likely more to be abused.

12. I also find that after filing of replication by the plaintiff on the request of the petitioner/defendant, a preliminary issue was framed and decided against the petitioner and at this stage in the High Court, the petitioner is now raising fresh plea that replication was accepted without leave of the court. In my opinion, the statement made in the replication is having a bearing on the controversy involved in the suit and under Order 8 Rule 9 of the CPC , discretion has been given to the court that the court may at any time require written statement, additional written statement from any of the parties. Admittedly, both the parties joined the preliminary issue regarding maintainability of the suit in view of Section 18 of the Act and the learned trial court has come to the conclusion that Suit is not barred under the Act. Learned counsel for the petitioner accepts that Suit is maintainable.

13. Accordingly, I come to the conclusion that there is no material illegality and jurisdictional error in exercise of power by the learned court below. This application is,



accordingly, dismissed.

(Anil Kumar Sinha, J)

Perwez/Ashwani

U			
---	--	--	--

