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A.No.4551 of 2022 in C.S.No.1230 of 1995

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Reserved on 10.11.2022	Pronounced on 21.11.2022
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G. CHANDRASEKHARAN, J.

This application is filed seeking permission by the plaintiff to file reply statement to the written statement filed by the third defendant.

2.The learned counsel for the plaintiff submitted that the suit in C.S.No.1230 of 1995 is filed seeking the relief of specific performance of agreements dated 18.09.1993 and 29.12.1993 executed between the plaintiff and the first defendant. During the pendency of the suit, the first defendant died and her husband, the fourth defendant was brought on record. The second defendant is the brother of the first defendant. Upon his demise, the third defendant was brought on record.



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3.The third defendant filed a suit in C.S.No.423 of 1995 for dividing the properties of Elie John. Elie John executed a Will in favour of the first defendant in respect of the suit property. Citing the pendency of C.S.No.423 of 1995, the first defendant did not perform her obligations. During the pendency of this suit, preliminary decree came to be passed in C.S.No.423 of 1995. In view of the subsequent events, it is necessary to file a reply statement to the written statement filed by the third defendant.

4.The learned counsel for the third respondent opposes this application on the ground that he was not impleaded in this case on the death of the second defendant. Even when the suit was filed, he was made as a party. The third defendant filed a written statement in 1995 itself. In the garb of filing the reply statement, plaintiff cannot introduce new pleas and raise inconsistent pleas. The averments in the reply statement that the third defendant's father was adjudged as an insolvent in 1965 is totally a new contention and has no bearing over the suit. In



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support of his submissions, he produced the following judgments:

1. **Darshan Singh and Ors. Vs. Surjeeth Kaur** reported in **MANU/AP/0074/2007**. The relevant portion is extracted hereunder:

12. Hence, it is always open to the plaintiff to bring to the notice of the Court the subsequent events by way of rejoinder. However, such subsequent pleading, if contains allegation of fact inconsistent with the pleading in the plaint, cannot be allowed since the same is barred under Order VI Rule 17 of CPC. While interpreting the scope of Rule 17 of Order VI of CPC, it was held by the Courts in a catena of decisions that though inconsistent pleas can be raised by the defendants in written statement, the same is not permissible in case of plaint. It needs no reiteration that the plaintiff cannot be permitted to raise inconsistent pleas or to alter the cause of action stated in the plaint either by way of amendment under Order



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*VI Rule 17 of CPC or by way of a subsequent pleading
rejoinder under Order VIII Rule 9 of CPC.*

2.State of Rajasthan and Ors. Vs.Mohammed Iqbal and Ors. reported
in **MANU/RH/0223/1999**. The relevant portion is extracted hereunder:

*9. The principles deducible from the above
discussions may be summarised thus -*

*a) The plaintiff cannot be allowed to introduce new
pleas by way of filing rejoinder, so as to alter the
basis of his plaint.*

*b) In rejoinder, the plaintiff can be permitted to
explain the additional facts which have been
incorporated in the written statement.*

*c) The plaintiff cannot be allowed to come forward
with an entirely new case in his rejoinder.*

*d) The plaintiff cannot be permitted to raise
inconsistent pleas so as to alter his original cause of
action.*



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e) Application under Order 8, Rule 9, CPC cannot be treated as one under Order 6, Rule 17, CPC as both are contextually different.

5.Considered the rival submissions and perused the records. Perusal of the pleadings in this case shows that the plaintiff filed the suit originally against the defendants 1.Leelie Setharaman 2.Appu John 3.V.K.John for the relief of specific performance of contract on the basis of the agreements dated 18.09.1993 and 29.12.1993. The relief of specific performance was sought only against the first defendant. It is claimed that second defendant is the attestor of the sale agreement. The plaintiff claims to have paid Rs.41,51,000/- as part of sale consideration. It is also the case of the plaintiff that the first defendant had set up defendants 2 & 3 against the plaintiff. During the pendency of the suit, the first defendant died and therefore, her husband the fourth defendant was impleaded. Therefore, it is clear that the third defendant was not impleaded on the death of the second defendant, but he was shown as a defendant even at the inception of the suit.



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6.The first defendant filed a written statement stating that the plaintiff is not entitled for the relief of specific performance. It is also averred that she received only Rs.21,51,000/- The defendants 2 and 3 are not necessary parties to the suit. It is claimed that the third defendant filed a suit in C.S.No.423 of 1995 against her and 2nd defendant for the relief of partition.

7.The third defendant filed written statement even in the year 1995 claiming that Elie John is his grandmother and she died intestate. He is entitled for share in the property and therefore, filed the suit for partition in C.S.No.423 of 1995. Since he has 1/3 share in the property, the sale agreement will not bind his share and therefore, the plaintiff is not entitled for the relief of specific performance. He had also filed the additional written statement in December 2014, challenging the impleadment of the fourth defendant as the legal representative of the deceased first defendant. There is also a mention about C.S.No.423 of 1995.



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8.This application is filed to receive the reply statement mainly on the ground that a preliminary decree was passed in C.S.No.423 of 1995 on 02.01.2018. Therefore, subsequent fact has to be pleaded by way of filing a reply statement.

9.On going through the reply statement of the plaintiff, this Court finds that the averments made in the reply statement are more or less, the reiteration of the averments made in the plaint. The filing of C.S.No.423 of 1995 was averred even in the written statement filed by the third defendant in the year 1995. The impact of the preliminary decree passed in the suit in C.S.No.423 of 1995 is subject to the outcome of this suit. This Court also finds that there is an averment made in paragraph 5 of the reply statement that the third defendant's father had been adjudged as an insolvent in I.P. No.68 of 1965. It is not known as to how adjudging the third defendant's father as an insolvent in I.P. No.68/1965 would in any way connected to this suit. As already stated, the averments made in the



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reply statement are the reiteration of the plaint averments. Therefore, this Court is of the view that the reply statement for reiteration of the averments made in the plaint is not necessary.

10.Thus, this application is dismissed.

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Index: Yes/No

Internet: Yes/No

Speaking Order/Non-Speaking Order



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