

**HIGH COURT OF JAMMU AND KASHMIR & LADAKH
AT JAMMU**

CM(M) No. 120/2023

Reserved on: 18.07.2024
Pronounced on: 31.07.2024

Mulkh Raj ...Petitioner(s)

Through :- Mr. Jagpaal Singh, Advocate

v/s

Dheeraj Singh & Ors.Respondent (s)

Through :- Ms. Supriya Chauhan, Advocate

CORAM: HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE

JUDGMENT

1. Petitioner has invoked supervisory jurisdiction of this Court, under Article 227 of the Constitution of India, for quashment of an order dated 09.06.2023, passed by learned Sub Judge (Special Mobile Magistrate), Kathua [“trial Court”] in a Civil Suit titled “Mulkh Raj v. Dheeraj Singh and ors”, vide which, an application preferred by him, in terms of Order VIII Rule 9 of the Code of Civil Procedure, 1908 [“CPC”] came to be dismissed.

2. Petitioner and respondents, hereinafter shall be referred, as per their status in the Suit i.e. as plaintiff and defendants respectively.

3. As factual narration of the controversy in the present case would unfold, a Civil Suit came to be preferred in the trial Court, by the plaintiff for declaration, declaring him as exclusive owner in possession of land, measuring 06 kanals 19 marlas, comprising Khasra No. 1136, situate at village Durang, Kathua, by way of prescription and adverse possession, with a consequential prayer for Permanent Prohibitory Injunction, restraining the defendants from disputing his

rights over the said property or evicting him from the suit land without adopting due procedure established under law or interfering in his possession over the same.

4. A detailed written statement came to be filed by the defendants. After filing of the written statement, plaintiff moved an application in the trial Court, under Order VIII Rule 9 CPC, seeking leave of the Court to file replica to the written statement of the defendants on the ground that defendants in Para-2 of their written statement had alleged that one Nathu was also owner of the suit land and since no document in support of alleged ownership of said Nathu was placed on record, therefore, same was required to be properly explained and replied by him by way of replication. According to the plaintiff, defendants, by way of written statement, had introduced completely a new case, which if not allowed to be answered, would put the parties to the multiplicity of proceedings. This application came to be dismissed by the trial court, vide impugned order primarily on the ground that plaintiff has come up with a simple application, for leave from which it cannot be assumed as to what stand he intends to take with respect to the assertion made by the defendants in para-2 of their written statement. Learned trial court is of the view that since plaintiff has not filed proposed replica along with leave application, it was not in a position to conclude as to whether grant of leave would amount to allow the plaintiff to set up a new controversy, contrary to the stand taken in the suit.

5. Plaintiff has assailed the impugned order primarily on the ground that learned trial court has failed to exercise the jurisdiction vested in it and has passed the impugned order in a casual and mechanical manner and without application of mind to the facts and circumstances of the case and losing sight of the scope and object of Order VIII Rule 9 CPC. According to the plaintiff, filing

of proposed replica is not a condition precedent for preference of an application under Order VIII Rule 9 CPC. It is contention of the plaintiff that in the application for leave, it was specifically pleaded that since defendants in paragraph 2 of the written statement had alleged that one Nathu was also owner of the suit land, but no such document was placed on record, it was only the said fact which was required to be replied by him for just decision of the case.

6. Heard arguments and perused the record.

7. While, Mr. Jagpaal Singh learned counsel appearing for the plaintiff, has reiterated the grounds urged in the memo of appeal, Ms. Supriya Chauhan, on the other side, has defended the impugned order by contending that filing of proposed replica is a condition precedent to an application in terms of Order VIII Rule 9 CPC and since proposed replica was not filed by the plaintiff, it was not possible for the trial Court to conclude as to what stand plaintiff intended to take.

8. There is no explicit provision in CPC for filing of 'replica' and this term is not legally defined anywhere. Ideally, a party in a civil suit is obliged to narrate all the material facts in its pleadings to base his claim. However, Rule 9 of Order VIII CPC provides for subsequent pleadings. It reads as:

"9. Subsequent pleadings

No pleading subsequent to the written statement of a defendant other than by way of defence to set-off [or counter claim] shall be presented except by the leave of the Court and upon such terms as the Court thinks fit, but the Court may at any time require a written statement or additional written statement from any of the parties and fix a time for presenting the same."

9. A close reading of the aforesaid provision makes it abundantly clear that no pleading subsequent to the written statement of a defendant, other than by way of defence to set-off or counter claim is permissible except by leave of the court and upon such terms as the court thinks fit. However, in terms of the said provision, Court is also vested with the power to allow a party to file additional written statement. Again, the expression "additional written statement" has not

been defined in CPC. However, it is pursuant to the aforesaid provision that Court may allow filing of an additional written statement or in other words “replica” to ensure that no prejudice is caused to other party. Therefore, court in exercise of its jurisdiction under Order VIII Rule 9 CPC has been empowered to grant leave for filing of replication in order to allow a party to furnish clarifications regarding additional facts or issues, which may have been raised by the other side in the written statement.

10. Learned trial Court has rightly observed that replica can be filed by the defendant with the leave of the court only if defendant has raised a new plea or facts in the written statement. It is by far a settled position of law that if defendant has introduced a new controversy in his written statement, the plaintiff must be afforded an opportunity to meet those facts by way of replication. However, there is a caveat that replica cannot be disguised as a fresh suit or a controversy so as to alter the very basis of the plaint. In other words, the basic plea raised by the plaintiff cannot be permitted to be altered under the garb of replica. It is trite that replication cannot be a substitute for the introduction of pleas, those are inconsistent with the pleas taken by the plaintiff in his suit. It is in this view of the matter that a court in exercise of its jurisdiction under Order VIII Rule 9 CPC has been empowered to grant leave for filing of replication by the plaintiff in order to allow him to respond to the new facts averred by the defendant in his written statement and the trial court in such cases are obliged to exercise the discretion with due care and circumspection and it should be exercised only if there are cogent reasons provided by the plaintiff for leave to file the additional pleas.

11. In the present case, defendants in their written statement have averred that their predecessor-in-interest, namely, Kartar Singh was in exclusive possession

of the land measuring 07 kanals 19 marlas, out of total land of 08 kanals and 08 marlas comprised of Survey No.136 situate at Village Durang, Tehsil Billawar, Kathua and being evacuee he along with one Nathu were owners and after the demise of said Kartar Singh, the aforesaid land came to be in exclusive ownership and possession of defendant No. 1 along with other defendants. Plaintiff in order to meet the aforesaid facts introduced by the defendants in their written statement filed the application in question in terms of Order VIII Rule 9 CPC seeking leave of the trial court to join the new pleas raised by the defendants that their predecessor-in-interest along with one Nathu was owner in possession of the suit land.

12. If Rule 9 of Order VIII CPC is carefully glanced over, it is evident that there is nothing to suggest that filing of proposed replica is a condition precedent to seek leave of the court for filing of replication. However, as already discussed, replication cannot be disguised as a fresh suit to alter the very basis of the plaint. The filing of replica would only facilitate the plaintiff to explain the issues raised by the defendant in his written statement and project the correct position with respect to the new facts raised by the defendant. All what trial courts, while considering the prayer of the plaintiff to file replication, are required to keep in mind is the nature of the suit, the relief craved for and the pleas sought to be raised by the defendant in the written statement.

13. It is specific case of the plaintiff in the leave application that since defendants in Para-2 of the written statement had alleged that one Nathu was also owner of the suit land and since no document in support of alleged ownership of Nathu was placed on record, same was required to be properly explained and replied by him by way of replication to the written statement. Therefore, the very foundation of the proposed replica has already been laid in the leave application

and filing of replica is a mere formality. Mr. Jagpaal, learned counsel appearing for the petitioner has submitted that all what plaintiff intended to clarify is already mentioned in the leave application and nothing more was required to be explained by him.

14. For what has been observed and discussed hereinabove, since the facts sought to be clarified by the plaintiff by way of replication are reflected in the leave application, learned trial Court, in its discretion, should have adopted a realistic and pragmatic approach and allowed the plaintiff to file formal replica. Hence, the present petition is allowed and impugned order is set aside. The leave application filed by the plaintiff is allowed and he is directed to file replica within week's time from the date copy of this order is made available to the trial Court.

(RAJESH SEKHRI)
JUDGE

JAMMU
31.07.2024
(Paramjeet)

Whether the order is speaking?
Whether the order is reportable?

Yes
Yes

