
(2012) 04 AP CK 0097

In the Andhra Pradesh High Court

Case No : Civil Revision Petition : 1708 of 2011

Chennuru Ramakrishna Reddy and Others

APPELLANT

Vs

Thotakura Chinna Veeramma and Others

RESPONDENT

Date of Decision : 02-04-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 16 Rule 17, Order 6 Rule 17, Order 6 Rule 5, Order 8 Rule 9

Citation : (2012) 3 ALD 640 : (2012) 4 ALT 407

Hon'ble Judges : C.V. Nagarjuna Reddy, J

Bench : Single Bench

Advocate : S.V. Bhatt, for the Appellant; J Sreenivasa Rao, Counsel for the Respondents 3 to 9 and 12 to 18, Mr. C. Naveen Kumar for, Counsel for the Respondent No. 10 and Sri V R Reddy Kovvuri, C.R.P.No. 1708 of 2011, Mr. C. Naveen Kumar, Counsel for the Respondent No. 1, C.R.P.No. 2284 of 2011 and Mr. C. Naveen Kumar, Counsel for the Respondent No. 1, C.R.P. No. 2703 of 2011, for the Respondent

Final Decision : Allowed

Judgement

C.V. Nagarjuna Reddy

1. These three Civil Revision Petitions arise out of a single suit between the same parties. Hence, they are heard and being disposed of together. For the purpose of convenience and to avoid ambiguity in the discussion, the parties are referred to hereinafter as they were arrayed in the suit.

2. The petitioners are the plaintiffs in O.S.No. 5 of 2005 on the file of the learned I Additional District Judge, Kadapa, filed for declaration of title and perpetual injunction. Originally, the suit was filed against defendant Nos. 1 to 10. Defendant Nos. 1 to 9 remained ex parte. Defendant No. 10 alone filed its written statement. The plaintiffs filed their rejoinder on 18.10.2005. On contest by defendant No. 10, the said suit was decreed by the trial Court on 27.02.2006. Questioning the said judgment and decree, defendant No. 10 filed A.S.No. 370 of

2006 before this Court which is stated to be pending. Later, defendant Nos. 1 to 9 filed I.A.No. 437 of 2006 to set aside the order setting them ex parte and also consequently to set aside the decree as a whole. The said application was allowed by the lower Court on 19.09.2007. Subsequently, defendant Nos. 11 to 14 filed I.A.No. 902 of 2008 for their impleadment in the suit. The said application was allowed by the lower Court by order, dated 25.09.2008. The plaintiffs have, accordingly, filed the amended plaint to the extent of the cause title only.

3. After his impleadment, defendant No. 11 has filed his written statement. A perusal of the docket proceedings sent by the lower Court would show that on 18.01.2008 the plaintiffs filed the neat copy of the plaint and since then the case was being adjourned from time to time for filing of written statement of defendant Nos. 1 to 9 and 11 and for filing of additional written statement of defendant No. 10. As the docket proceeding ended with 20.03.2009 only, it does not contain the date on which the additional written statement was filed by defendant No. 10. The learned counsel for the plaintiffs has stated that the additional written statement was filed by defendant No. 10 on 06.10.2009.

4. The plaintiffs have filed I.A.No. 72 of 2011 to return the additional written statement filed by defendant No. 10, as no specific permission was obtained by him from the Court for filing such additional written statement. The lower Court, however, declined the said request by dismissing the said LA. Questioning the same, the plaintiffs filed C.R.P.No. 1708 of 2011.

5. After disposal of I.A.No. 72 of 2011, defendant No. 10 filed two applications, namely, I.A.No. 115 of 2011 for reopening the evidence of P.W.1 and I.A.No. 114 of 2011 for recalling P.W.1 for further cross-examination. Both these applications were allowed by the lower Court by common order, dated 07.02.2011. Challenging the order in I.A.No. 114 of 2011, the plaintiffs filed C.R.P.No. 2703 of 2011 and against the order in I.A.No. 115 of 2011 they have filed C.R.P.No. 2284 of 2011.

6. At the hearing, Mr. S.V. Bhatt, learned counsel for the plaintiffs, submitted that the lower Court committed a serious error in allowing the filing of additional written statement by defendant No. 10 and dismissing the plaintiffs' application for returning the same.

7. The learned counsel for the defendants seriously opposed this contention.

8. I have carefully considered the submissions of the learned counsel for the parties.

9. A perusal of the order of the lower Court would show that the learned Judge has relied upon two considerations in allowing defendant No. 10 to file the additional written statement. They are (i) under Order VI Rule 5 of the CPC 1908 (for short "CPC") a better statement of the nature of the claim or defence or further better particulars of any matter stated in any pleading may be called

upon in all cases upon such terms as to costs and otherwise as may be just, and (ii) the principles of natural justice also require giving of such opportunity to defendant No. 10 to file additional written statement with reference to the pleadings raised by defendant No. 11 which appeared to have been adopted by defendant Nos. 12 to 14.

10. As rightly pointed by the learned counsel for the plaintiffs, Order VI Rule 5 of CPC was repealed by the CPC (Amendment) Act, 1999 with effect from 01.07.2002. Placing reliance on the repealed provision by the lower Court, therefore, cannot be sustained. Order VI Rule 17 of CPC deals with the power of the Court to permit to alter or amend the pleadings of the parties. Under the proviso thereof, no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that inspite of due diligence, the party could not have raised the matter before the commencement of trial. Order VIII Rule 9 of CPC deals with filing of subsequent pleadings. Under this provision inter alia 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.

11. From the above-mentioned provisions, it is clear that a party cannot claim filing of additional pleadings as of right. It always falls in the realm of the discretion of the Court which, having regard to the facts and circumstances of each case, will have to exercise its discretion as to whether to permit the parties to amend their pleadings at subsequent stages of the suit. Ordinarily, while allowing such amendments, the parties are not permitted to raise pleadings which will change the nature and complexion of the suit and at times the Court may not permit the parties to resile from the admissions made in their pleadings by way of subsequent pleadings which if permitted may put the adversary party to disadvantage.

12. The learned counsel for the plaintiffs submitted that as defendant No. 10 already filed his written statement and the amendment of the plaint by the plaintiffs was made only to amend the cause title without raising any new plea, the lower Court ought not to have permitted defendant No. 10 to file additional written statement as a matter of course.

13. I find force in the submission of the learned counsel for the plaintiffs. The question of complying with the principles of natural justice would arise only if new pleas were raised by the opposite party. As asserted by the learned counsel for the plaintiffs, no new plea appeared to have been raised by the plaintiffs. Therefore, I am unable to subscribe to the view of the lower Court that the principles of natural justice require that defendant No. 10 is given an opportunity to file additional written statement.

14. According to the learned counsel for the plaintiffs, the additional written statement filed by defendant No. 10 has raised many contentious pleas which

were not earlier mentioned in his written statement and that his filing additional written statement was only with a view to recall P.W.1 for his further cross-examination.

15. In my opinion, all these aspects ought to have been considered by the lower Court, had a proper application been filed by defendant No. 10 either under Order XVI Rule 17 or Order VIII Rule 9 of CPC. In such an event, the plaintiffs would have had an opportunity of contesting such application and convincing the lower Court to reject the application. Such an opportunity has been denied to the plaintiffs.

16. For all the above-mentioned reasons, the orders of the lower Court are set aside. Defendant No. 10 is, however, permitted to file an application for amendment of his written statement. In such an event, the plaintiffs are entitled to contest the same and the lower Court shall thereupon pass an order in accordance with law.

17. The Civil Revision Petitions are, accordingly, allowed. As a sequel, C.R.P.M.P.No. 2447 of 2011 in C.R.P.No. 1708 of 2011 filed by the plaintiffs for interim relief is disposed of as infructuous.