

(2013) 03 MAD CK 0017

In the Madras High Court

Case No : C.R.P. (MD) No's. 7 and 8 of 2012 (PD)

Gowriammal and Others

APPELLANT

Vs

T. Meenakshi and G. Subbulakshmi

RESPONDENT

Date of Decision : 22-03-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 5, Order 6 Rule 17, Order 6 Rule 7, Order 8 Rule 9, 151

Citation : (2013) 3 LW 222

Hon'ble Judges : S. Vimala, J

Bench : Single Bench

Advocate : V. Ramakrishnan, for the Appellant; M. Rajaraman, for the Respondent

Final Decision : Disposed Off

Judgement

S. Vimala, J.—When the defendants want to raise additional pleadings, which raise (a) any new ground of claim or (b) contain any allegation

of fact inconsistent with the previous pleadings of the defendants, whether it should be done by way of filing additional written statement or by

amending the original written statement is the issue raised in this Civil Revision Petition. The 6th defendant filed a petition in I.A. No. 18 of 2010 in

O.S. No. 675 of 1998 under Order 8 Rule 9 read with 151 C.P.C., praying to receive the additional written statement filed by her. It was allowed

by the Trial Court. As against the same, the plaintiffs have filed the Civil Revision Petition (MD) No. 8 of 2012.

2. The 9th defendant filed an application under Order 14 Rule 5 C.P.C., in I.A. No. 17 of 2010 in O.S. No. 675 of 1998, praying to pass an

order to frame additional issues.

3. The following issues were sought to be framed which pertain to Item No. 4 of the suit property:

- a) Whether the plaintiffs had any right over the fourth item of the suit property?
- b) Whether the fourth item of the suit property was given to 5th and 6th defendants by their brother late Hariram and as such, the legal heirs of 5th and 6th defendants are in possession of the property?

The said application was allowed by the Trial Court. As against the same, the plaintiffs have filed the Civil Revision Petition (MD) No. 7 of 2012.

4. It was the claim of the 6th defendant that the fourth item of the suit property was given to herself (D-6) and the fifth defendant (D-5) and as

such, they are in possession and enjoyment of the fourth item of the property. It is claimed that, this statement having been omitted to be stated, has

to be brought on record, through the filing of the additional written statement.

5. The issue raised was whether the remedy open to the 6th defendant was to amend the written statement as originally filed or to file additional

written statement. The Trial Court was of the view that as the Trial was yet to commence, filing of additional written statement has to be allowed

and accordingly, allowed I.A. No. 18 of 2010.

6. The Trial Court allowed I.A. No. 17 of 2010 in O.S. No. 675 of 1998 by the order dated 29.07.2010 on the ground that the additional written

statement was permitted to be received in I.A. No. 18 of 2010 in O.S. No. 675 of 1998.

7. As the filing of the additional written statement/amending the original written statement would generate consequential additional issues arising for

consideration, and as such those issues are inter related, common order is pronounced.

8. The deceased 5th defendant has filed a written statement along with the 6th defendant by taking a specific plea that the suit properties are

remaining undivided and that they have been in joint possession and enjoyment along with the plaintiff, the 1st defendant and the 4th defendant. In

the proposed additional written statement, it is the contention of the 6th defendant that the suit properties were already partitioned even during the

life time of the deceased Hariram and hence the suit is not maintainable. Contending that the defendants should not be allowed to take inconsistent

and contradictory pleas, the respondents/plaintiffs prayed for dismissal of the

petitions.

9. Under the given set of facts discussed above, i.e., when the defendants have raised pleas inconsistent with each other, whether provisions of

Order 8 Rule 9 C.P.C., or Order 6 Rule 7 C.P.C., would apply is the issue to be considered.

10. It is relevant to extract Order 8 Rule 9 C.P.C., and Order 6 Rule 7 C.P.C., which are as follows:-

Order 8 Rule 9 C.P.C.-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 of not more than thirty days for presenting the

same.

11. A Perusal of Order 8 Rule 9 C.P.C. would go to show that the rule consists of two parts. The first part enacts a ban on filing of a subsequent

pleadings after the filing of the written statement. However, this ban is not applicable to pleadings which are by way of defence to set off or counter

claim. The facts of this case do not relate to the plaintiffs wanting to file any additional pleadings. Therefore, the first part of the section would not

apply to the facts of this case.

12. Under the second part, the Court may at any time require a written statement or additional written statement. As the section uses the phrase

any of the parties", it is evident that the rule is applicable to a plaintiff as well as the defendant, because in a counter-claim, the status of the plaintiff

is that of the defendant. It is not a case where the defendant has raised any counter claim or set off. Therefore, there is no occasion to treat the

written statement as a plaint. The second part of the rule does not confer any right on the party to file written statement or additional written

statement. They can do so only on being "required" by the Court so to do. This is not a case where the Court has required the defendants to file

any additional written statements. Therefore, the provision of O.8 R. 9 C.P.C. will not apply to the facts of this case.

13. The next question is whether the provision of O.6 R. 7 C.P.C. will apply?

14. Order 6 Rule 7 C.P.C., reads as under:-

Order 6 Rule 7 C.P.C.-Departure:- No pleading shall, except by way of amendment, raise any new ground of claim or contain any allegation of fact inconsistent with the previous pleadings of the party pleading the same.

15. Reverting to the facts of the case, it is relevant to point out that the defendants 5 and 6 were impleaded as per the order in I.A. No. 639 of 2002 dated 11.08.2003 amended as per the order in I.A. No. 475 of 2003 dated 04.11.2003.

16. In the written statement filed by defendant Nos. 5 and 6, it is stated in paragraph 3 that the suit properties were enjoyed by the plaintiffs, the defendants, defendants No. 1 to 4 and the said Hariram jointly without any division.

17. In the additional written statement sought to be received, what is stated is that the suit properties were already partitioned even during the lifetime of deceased Hariram and therefore, the suit for partition is not maintainable.

18. So far as the fourth item of the suit property is concerned, the contention of the 6th defendant is that it was given to her and the 5th defendant and it is in their exclusive possession.

19. A perusal of the written statement and the additional written statement would go to show that the defence is inconsistent. But, the fact remains that the Trial has not yet commenced.

20. It is relevant to quote the following decisions, which discusses the scope of amendment of pleadings under Order 6 Rule 17 C.P.C.

1. Sushil Kumar Jain Vs. Manoj Kumar and Another,
2. Baldev Singh and Others Etc. Vs. Manohar Singh and Another Etc.,
3. Usha Balashaheb Swami and Others Vs. Kiran Appaso Swami and Others,

In all these decisions, the principles settled is that an amendment of a plaint and an amendment of a written statement are not necessarily governed by the same principle and that adding a new ground of defence or substituting or altering a defence does not raise the same problem as adding, altering or substituting a new cause of action.

21. It is equally well settled principle that in the case of amendment of a written statement, the Court would be more liberal in allowing than that of the plaint.

22. Under Order 6 Rule 17 C.P.C., the Court may allow either party to alter or amend the pleadings and no application for amendment shall be allowed after the Trial has commenced.

23. Under the factual background discussed above, the question for consideration is whether the defence raised by the defendant has raised new ground of claim or contain any allegation of fact inconsistent with the previous pleadings. If so, the course open to the defendant is, whether to file the additional written statement only by way of amendment as contemplated under Order 6 Rule 7 C.P.C.

24. As discussed already, the defence of joint possession/unity of possession has been raised in the original written statement and the plea of separate possession/separation of status has been pleaded in the additional written statement. The proposed written statement contain allegations of fact, which is inconsistent with the previous pleadings. Therefore, the 6th defendant can raise additional pleadings only by way of amendment and not otherwise.

25. Therefore, the orders of the Trial Court allowing the petitions to receive additional written statement and to raise additional issues are set aside.

26. However, it is open to the 6th defendant to raise the additional pleadings by way of amendment, as the trial has not yet commenced, and if such pleadings are raised, it is open to the Trial Court to consider the same in the light of the legal position indicated above. Under the stated circumstances, it is also for the Trial Court to consider the claim arising for framing additional issues. With the above observations, these Civil Revision Petitions are disposed of. No costs.