

(1986) 03 MAD CK 0051
In the Madras High Court
Case No : C.R.P. 4645 of 1984

Muthiah Mudaliar and others

APPELLANT

Vs

Dhandapani Mudaliar and another

RESPONDENT

Date of Decision : 31-03-1986

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17

Citation : (1986) 03 MAD CK 0051

Hon'ble Judges : Singaravelu, J

Bench : Single Bench

Advocate : T. S. Rajagopalan, for the Appellant; T.V. Balakrishnan, for the Respondent

Final Decision : Dismissed

Judgement

Singaravelu, J.—Defendants 2 to 4 in the suit are the revision petitioners before me. The first respondent plaintiff filed the suit for partition in respect of the schedule properties in the plaint. The first defendant in the suit who is now the second respondent before me contended before the trial Court that a registered partition had already taken place in the family in the year 1958 and therefore, a second partition does not lie. The first defendant further contended that many of the suit items are his self-acquired properties which are not liable for partition. Defendants 2 to 4 who are the present revision petitioners filed a written statement through their counsel and admitted in their written statement that a registered partition had taken place in the family on 23rd November, 1973, and specifically stated that nothing remained to be divided after the said partition. The petitioners herein further contended that there is no question of accounting between the parties and that the first defendant is doing business separately and that he has nothing to do with the family. It is common ground that the suit was filed in the year 1982 and the suit was listed for trial and the case taken up. P.W. 1 was examined and cross examined. At that stage, defendants 2 to 4 filed an application to file an additional written statement and on objection by the first

defendant-second respondent, the learned Subordinate Judge dismissed the application. Hence the revision. Learned counsel for the petitioners argued that these defendants could not give all the particulars in the original written statement and that they are giving only additional particulars in the proposed written statement. Learned counsel also cited certain ruling before me which are as follows.

2. The first decision cited is *Prasant Chandra Sen v. United Commercial Bank* AIR 1982 Cal. 568. wherein a written statement was sought to be accepted and in that case it was held that even if there is an inconsistent claim, it can be allowed by way of amendment. That was a case where the United Commercial Bank filed a suit for recovery of money against two defendants. The first defendant was a company in liquidation and the second defendant was the guarantor. The second defendant guarantor denied the guarantee of repayment of the outstanding dues of the plaintiff bank. In the amended written statement the second defendant pleaded that the alleged guarantee had come to an end and therefore he is not liable to pay any amount. On those facts, the learned Judges held that in an application for such amendment, the court will have to find out whether there is mala fides or not in the application and if it is found that there is no mala fides the amendment can be allowed even if there is an inconsistent plea in the written statement.

3. The next case cited at the bar is *V. P. Palanisami and another v. Deivanaiammal* 1933 T.L.N.J. 291 : 96 L.W. 560. That was a suit for partition and a preliminary decree was passed. A final decree application was filed and a Commissioner was appointed to divide the properties. During the time of the inspection of the Commissioner, according to the plaintiffs, it was found that a well was omitted to be included in the list of properties in one of the survey numbers as available for division. Consequently, an application under O. 6, R. 17, C.P.C., was filed to include the said well. In that context, this Court set aside the order of the lower court refusing to allow the amendment and directed the property to be included in the final decree application. The last case cited on behalf of the petitioners is *Shri Iswar Jagannath Deb Jew Vs. Fatik Chandra Seal and Others*, ., the decision in which says that just relief should not be refused for some infraction of rules of procedure, mistake, inadvertence or negligence. The principles laid down in these cases cannot be disputed. But each case has to be decided on its own merits and on its own facts.

4. Learned counsel for the respondents placed before me the ruling in *Murthi Gounder Vs. Karuppanna Gounder*, .. That is a suit for declaration of title and after the trial was commenced and two witnesses had been examined, the defendants filed an application for leave to file an additional written statement raising a new case. That was rejected by the trial court and in revision, the learned Judge held that considering the stage at which such an application had been filed, undoubtedly prejudice would be caused to the other parties and consequently, confirmed the order of the District Munsif refusing to permit the

revision petitioner permission to file the additional written statement.

5. Bearing these principles in mind, let us have a look at the facts of the case before us. As already pointed out, this is a suit for partition by one of the brother against his brothers. As already stated, the present petitioners filed a written statement admitting the registered partition of the year 1975 and plainly stated that there is no question of further partition between the parties and that the partnership accounts were also settled between the parties and amounts paid and received. Now, two years after filing the written statement, the petitioners-defendants want to give up the original written statement and put forward a new case by way of amendment and they want to say that no partition had taken place, that no accounts were looked into and that the first defendant-second respondent had been carrying on the business on behalf to the joint family and so on. It is clear that this is a totally new case that the real contesting defendant in the suit is called upon to face. The other defendants, namely, the present petitioners, appear to sail with the plaintiff and therefore, their present version which is directly contrary to the previous version in the original written statement cannot be allowed to be pleaded as there are no bona fides. Normally, in the case of amendment of plaints, courts are liberal and give both parties opportunity to put forth their cases. But, in the instant case, the additional written statement by way of amendment is totally inconsistent with the earlier written statement and such a pleading cannot be allowed to be put forward, especially when the suit is part heard. This will be only putting a premium on the parties to go back on their solemn written statement filed at the earliest opportunity. Viewed in this light, I agree with the lower court that this additional written statement by way of amendment cannot be allowed since it will cause considerable hardship and prejudice to the only contesting defendant, namely, the second defendant. Further, it will be an open invitation for perjury and it will also be waste of judicial time. For all these reasons I am satisfied that this additional written statement cannot be allowed by way of an amendment under O. 6, R. 17, C.P.C. Consequently, the order of the lower court is confirmed and the civil revision petition is dismissed. No costs.