

(2006) 12 MAD CK 0030

In the Madras High Court

Case No : C.R.P. (PD) (MD) No. 905 of 2006 and C.M.P. (MD) No. 1 of 2006

R.S. Nagarajan

APPELLANT

Vs

R.S. Goapalan, R.S. Munirajan, R.S. Bhaskaran and Mrs.
Rathinadevi

RESPONDENT

Date of Decision : 20-12-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 16, Order 6 Rule 17, Order 8 Rule 1, Order 8 Rule 9, 151

Citation : (2006) 12 MAD CK 0030

Hon'ble Judges : K. Venkataraman, J

Bench : Single Bench

Advocate : S. Krishnamoorthy, for the Appellant; K. Govindarajan for Respondent-1, Mr. V. Sarangapani for Respondent-2 and Mr. V.K. Vijayaraghavan for Respondent-4, for the Respondent

Judgement

K. Venkataraman, J.—The second defendant in O.S. No. 7 of 2004 on the file of the Fast Tract Court No. I, Thanjavur is the petitioner. The plaintiff in the said suit is the first respondent. The defendants 1, 3 and 4 are the respondents 2 to 4 herein. The petitioner/second defendant, who has suffered an order in I.A. No. 769 of 2006 in which he has prayed for filing an additional written statement, has filed the present revision to set aside the said order. The short facts of the case is as follows :-

The first respondent has filed the suit in O.S. No. 7 of 2004 against the petitioner and other respondents for partition and separate possession. In the said suit, the petitioner being the second defendant has filed the written statement repudiating the contentions raised in the plaint. While so, he has filed an application in LA. No. 769 of 2006 under Order 8 Rule 9 read with Section 151 C.P.C, for receiving additional written statement. The said application has been dismissed by the Court and the present revision is directed against the said order. In the affidavit in support of the said application, the petitioner has averred that due to high regard which he had for his elder brother, the first defendant, he has been

prevailed over to sign the statement prepared by the first defendant. Now realising the position, it has become necessary for him to tell the truth before the Court by filing the additional written statement. It is an admitted fact that the petitioner has given a go-bye to the pleadings raised in the original written statement and In the additional written statement, totally he is seeking to introduce a new case.

2. The learned counsel for the petitioner has submitted that inconsistent plea can be taken in the written statement and the Court below should have allowed the application filed by the petitioner for reception of additional written statement. In support of his contention, the learned counsel for the petitioner has relied upon the judgment reported in 2004 (4) C.T.C. 759 (T.K. Govindasamy and others v. T.K. Natarajan and others). By citing the said judgment, the learned counsel for the petitioner has stressed that under the said judgment, it has been held that Order 8 Rule 9 C.P.C, gives wide power to Courts to give permission to the defendant to file additional written statement. But, in the same judgment, the learned judge has observed that if the additional written statement did not create any new case or did not amount to inconsistent plea and if the additional written statement is in the nature of giving details regarding character of properties, then it can be received. Hence, the said judgment will not be of any use to the petitioner.

3. Another judgment that has been cited by the learned counsel for the petitioner is reported in Sri Srinivasamurthy Mandiram Vs. Mrs. Gnanasoundari, The said judgment deals with Order 6 Rule 16 C.P.C, namely, striking out pleadings in the written statement. The said judgment will not also be of any use to the petitioner.

4. Yet another judgment cited by the learned counsel for the petitioner is reported in 2005 (5) C.T.C. 38 (Radhabai Ammal v. N. Loganathan). Even in the said judgment, it has been held as follows:-

Permission of the Court has to be obtained under Order 8 Rule 9 C.P.C. Under what circumstances leave is to be granted and how the discretion has to be exercised depends on the facts and circumstances of each case and in all such cases, the party, who seeks leave has to explain as to why this contention was not raised in the earlier pleadings. While exercising the discretion, the Court will consider the conduct of the party, stage of the litigation, delay that has occasioned, how far the opposite party will be put to hardship.

The said judgment clearly says that the leave can be granted depending upon the facts and circumstances of the case. The said judgment also does not help the petitioner.

5. The other decision that has been cited by the learned counsel for the petitioner is reported in Baldev Singh and Others Etc. Vs. Manohar Singh and Another Etc., . In the said judgment, the Apex Court, while dealing with Order 6 Rule 17 and also Order 8 Rule 1 C.P.C, for amendment of the written statement, has held that inconsistent defences can be raised in the written statement. But,

the case on hand is not amending the written statement, but seeking permission to file additional written statement, totally giving a go-bye to the plea raised in the original written statement, So, this judgment also will not be of any use to the petitioner. Furthermore, in the said judgment in paragraphs 13, 14 and 15, Their Lordships have observed as follows:-

The next question is that if such amendment is allowed, certain admissions made would be allowed to be taken away which is not permissible in law. We have already examined the statements made in the written statement as well as the amendment sought for in the application for amendment of the written statement. After going through the written statement and the application for amendment of the written statement in depth, we do not find any such admission of the appellants which was sought to be withdrawn by way of amending the written statement.

...That apart, in our view, the facts stated in the application for amendment were in fact an elaboration of the defence case. Accordingly, we are of the view that the High Court as well as the trial court had erred in rejecting the application for amendment of the written statement on the ground that in the event such amendment was allowed, it would take away some admissions made by the defendant/appellants in their written statement

...After going through the pleadings and also the statements made in the application for amendment of the written statement, we fail to understand how inconsistent plea could be said to have been taken by the appellants in their application for amendment of the written statement, excepting the plea taken by the appellants in the application for amendment of written statement regarding the joint ownership of the suit property. Accordingly, on facts, we are not satisfied that the application for amendment of the written statement could be rejected also on this ground.

Thus, the Apex Court on the facts of that case has held that the amendment that has been sought for in that case was an elaboration of the defence already taken. Thus, the said judgment will not be of any use to the petitioner.

6. On the side of the respondents, a judgment reported in 1999 (TIT) C.T.C. 52 = 1999-3-L.W. 458 (Suhramanian v. Jayaramati) has been relied upon. In the said judgment it has been clearly held as follows:-

Leave to be rejected when defendants introduce entirely different case in additional written statement so as to prejudice the other side.

7. The other judgment relied on by the learned counsel for the respondents is reported in Modi Spinning and Weaving Mills Co. Ltd. and Another Vs. Ladha Ram and Co., . In the said judgment, it has been held as follows:-

Under Order 6 Rule 17 C.P.C, amendment of written statement is not allowed when the effect would be to displace the plaintiff's suit and deprive him of a valuable right already accrued to him. An entirely different and new case cannot

be substituted by this process. The defendant can place his contention when issues are to be framed.

8. The other judgment that has been relied upon by the learned counsel for the respondents is reported in 1996 S.A.C. (S.C.) 884 (Shrimoni Gurdwara Committee v. Jaswant Singh) wherein it has been held as follows:-

Mutually inconsistent pleadings are permissible. Defendant cannot raise mutually destructive pleas. Refusal of amendment raising pleas destructive of those in original written statement is justified.

9. The other judgment cited by the learned counsel for the respondents is reported in 1986 (2)M.L.J. 403 - (1986) 99 L.W. 709 (Muthiah Mudahar v. Dhandapani Mndaliar). In the said judgment, it has been held as follows:-

This is a suit for partition by one of the brothers against his other brothers. The present petitioner 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 has taken place, that no accounts were looked into and that the first defendant/second respondent had been carrying on the business on behalf of the joint family and so on. It is clear that this is a totally new case that a real contesting defendant to 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 tides. Normally, in the case of amendment of complaints, 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.

10. The other decision relied upon by the learned counsel for the respondents is reported in Devanbu Vs. Sundara Raj, Susai Raj, Ramanujam and Gnanarathnam, wherein it has been held as follows :-

When a plea was available to the party and when it has not been raised, it is not open to the party to raise it by way of additional written statement.

11. Thus, the above decisions will clearly establish that the defendant cannot raise mutually destructive pleas. In the case on hand, the petitioner now tries to introduce altogether a new case by way of filing an additional written statement. That cannot be allowed. The Court below has rightly dismissed the application

filed by the petitioner and I do not find any error of jurisdiction or illegality" in the said order. Hence, the order passed by the learned Fast Tract Court judge, Thanjavur dated 19.10.2006 made in I.A. No. 769 of 2006 in O.S. No. 7 of 2004 is hereby confirmed and the Civil Revision petition stands dismissed. Consequently, C.M.P. No. 1 of 2006 is closed. However, there is no order as to costs.