

**(2009) 06 AP CK 0059**  
**In the Andhra Pradesh High Court**  
**Case No : C.R.P. No. 1659 of 2009**

|                                   |    |            |
|-----------------------------------|----|------------|
| S. Venkata Ramanaiah and Another  | Vs | APPELLANT  |
| S. Venkateswarlu Gupta and Others |    | RESPONDENT |

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**Date of Decision :** 12-06-2009

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 1, Order 6 Rule 17, Order 8 Rule 9, 151  
Constitution of India, 1950 — Article 227

**Citation :** (2009) 5 ALD 211 : (2009) 5 ALT 146

**Hon'ble Judges :** P.S. Narayana, J

**Bench :** Single Bench

**Advocate :** K. Rathanga Pani Reddy, for the Appellant; Rama Mohan, for M.S.R. Subrahmanyam, for the Respondent

**Final Decision :** Dismissed

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## Judgement

P.S. Narayana, J.—This Court ordered notice before admission on 20.4.2009 and granted interim stay for a limited period.

2. Sri M.S.R. Subrahmanyam, entered appearance on behalf of the first respondent/plaintiff. Respondents 2 to 6 in the Civil Revision Petition are specified as not necessary parties to the petition.

3. Sri Rathangapani Reddy, the learned Counsel representing revision petitioners/defendants 1 and 2, would maintain that the learned Principal Junior Civil Judge, Dhone, totally erred in allowing the application by granting permission to the first respondent/plaintiff to file rejoinder without considering the fact that two years ago written statement had been filed. The learned Counsel also would maintain that the first respondent/plaintiff having been unsuccessful in obtaining injunction thought of this application only with a view to fill up gaps by taking inconsistent pleas. The learned Counsel also would maintain that even otherwise they failed to file rejoinder within a reasonable time and after a long lapse of two years after filing the written statement, this application had been filed. The

learned Counsel also pointed out that in the light of the averments made in the affidavit filed in support of the application, two new pleas relating to the admissibility of the family settlement and whether it was acted upon and another plea relating to the fraud in relation to the sale deed, dated 4.2.1984, are being put forward and these pleas being new pleas or in a way inconsistent pleas with the original pleading, such pleas cannot be permitted to be raised by way of additional pleadings that is by way of rejoinder and hence, the Civil Revision Petition to be allowed. The learned Counsel also had taken this Court through the language of the relevant provisions of the Code of Civil Procedure, 1908.

4. Per contra, Sri Rama Mohan, learned Counsel representing Sri M.S.R. Subrahmanyam, learned Counsel for the first respondent/plaintiff, would maintain that no doubt in the averments made in the affidavit filed in support of the application, the plea of fraud in relation to sale deed, dated 4.2.1984, also had been specified. But, however, the learned Counsel placed a copy of the proposed rejoinder filed on behalf of the plaintiff and on a careful reading of the averments made therein, it appears that such specific plea relating to sale deed had not been incorporated. The learned Counsel also would maintain that in a way, this is a pretrial amendment and instead of filing an application under Order VI Rule 17 of the Civil Procedure Code, this application was filed under Order VIII Rule 9 of the CPC praying for putting in an additional pleading and the learned Principal Junior Civil Judge, Dhone, had exercised judicial discretion by granting leave and permitting to file the said additional pleadings i.e., rejoinder. The Counsel also would maintain that this proposed amendment by way of additional pleading had not introduced any new case. As such, it is more or less clarificatory in nature, in the light of the defence taken in the written statement. The Counsel also would further maintain that it is not as though the revision petitioners-contesting defendants have no opportunity of putting in further pleading, they can as well file additional written statement in response to the averments made in the rejoinder and inasmuch as virtually this is a pre-trial amendment and since the learned Principal Junior Civil Judge, Dhone, had exercised the discretion properly in permitting the same, the Civil Revision Petition being devoid of merit, the same to be dismissed.

5. Heard the counsels on record.

6. Perused the respective pleadings of the parties, the proposed rejoinder filed on behalf of the plaintiff and also the order impugned in the present Civil Revision Petition.

7. The revision petitioners/the first and second defendants in the suit filed the present Civil Revision Petition under Article 227 of the Constitution of India questioning the order made by the learned Principal Junior Civil Judge, Dhone, in I.A. No. 416 of 2008 in O.S. No. 112 of 2006.

8. The learned Principal Junior Civil Judge, Dhone, after formulating the point for consideration, recorded reasons as hereunder:

In this matter the petitioner intend to file rejoinder to establish his case that the alleged family settlement is not acted upon between the parties, in its entirety. As to this, let the petitioner come with rejoinder with all incidental pleadings lest there may not be multiplicity of proceedings. The plea of inconsistency raised by the respondents is such that if that plea is examined threadbare it amounts to entering into the very merits of the pleadings between the parties. The Court is not inclined to enter into the said controversy at this stage.

9. The proposed rejoinder filed on behalf of the plaintiff reads as hereunder:

It is submitted that the family settlement deed dated 12.10.1987 (Xerox copy of the settlement deed was filed by the 1st defendant) is not admissible in evidence, as the 1st defendant filed only Xerox copy. Even, if original is filed it is also not admissible as it not registered.

Further it is submitted that the said family settlement deed is not acted upon in its entirety. In fact after some years, the 1st defendant required amounts for the development of second defendant Rice Mill, exchange the item No. 4 of plaint schedule plot with the plaintiff's plots situate at Kurnool, Anantapur two plots at Dhone. After that the 1st defendant sold away plots at Anantapur and Kurnool by way of registered sale deeds filed here in certified copies.

It is further submitted that as per family settlement deed 12.10.1987 the plaintiff was allotted 5 plots at Dhone, 2 plots at Anantapur and 2 plots at Kurnool, in fact no plots at Kurnool, Anantapur and Dhone are available to the plaintiff, as 1st defendant sold away one plot at Kurnool and 2 plots at Anantapur. In Dhone town only three plots (including the item No. 4 of plaint schedule property) are there out of 5 plots.

10. The respective pleas taken in the pleadings are also placed before this Court. In the affidavit filed in support of the application praying for leave to file rejoinder, it is stated that originally the suit had been filed for the relief of permanent injunction and the plaintiff also filed I.A. No. 299 of 2006 praying for ad-interim injunction and initially an order of status quo had been granted and the first defendant filed written statement taking a plea that some of the properties had fallen to his share in family arrangement and filed a xerox copy of the same along with written statement. It is stated that the family settlement is not admissible as per law and the same was never acted upon. It is also specified that the first defendant by playing fraud got original sale deed dated 4.2.1984 and on noticing the same, it is stated that he had made certain complaints.

11. In the counter, these allegations had been specifically denied. It is needless to say that the plea of obtaining the sale deed by fraud had not been specified in the proposed rejoinder. The contents of the same being self-explanatory need not be further elaborated. The first respondent/plaintiff filed the said application praying for permission to put in additional pleadings i.e. rejoinder under Order VIII Rule 9 r/w Section 151 of the CPC (hereinafter referred to as "the Code" for the purpose of convenience). Order VIII of the Code deals with written

statement, set-off or counter-claim. It is no doubt true that the word or expression "rejoinder" had not been specifically specified. Order VIII Rule 9 of the Code dealing with "subsequent pleadings" reads as hereunder:

No pleading subsequent to the written statement of a defendant other than by way of defence to set-off or counterclaim 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.

12. It is needless to say that Order VI Rule 1 of the Code dealing with "pleadings" reads "pleading" shall mean plaint or written statement. Instead of filing an application praying for amendment of plaint under Order VI Rule 17 of the Code, may be the first respondent/plaintiff was advised to file the present application under Order 8, Rule 9 to put in subsequent pleadings by way of rejoinder.

13. In State of Rajasthan and Another Vs. Mohammed Iqbal and Others, the High Court of Rajasthan laid down the following principles while allowing the plaintiff to file additional pleadings:

(i) The plaintiff cannot be allowed to introduce new pleas by way of filing a rejoinder, so as to alter the basis of his plaint.

(ii) In rejoinder, the plaintiff can be permitted to explain the additional facts which have been incorporated in the written statement.

(iii) The plaintiff cannot be allowed to come forward with an entirely new case in his rejoinder.

(iv) The plaintiff cannot be permitted to raise inconsistent pleas so as to alter his original cause of action.

(v) Application under Order 8, Rule 9, CPC cannot be treated as one under Order 6, Rule 17, CPC as both are contextually different.

14. Order 6, Rule 17 of the Code dealing with "amendment of pleadings" reads as hereunder:

The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

15. As already aforesaid, no doubt this application had been filed after a lapse of two years after filing the written statement. But, it is not in serious controversy

that this is just a pre-trial amendment by virtue of an additional pleading. It is needless to say that such amendments relating to the pleadings may have to be liberally allowed? especially to avoid multiplicity of proceedings and hence the stand taken that this proposed additional pleading is thought of at a belated stage cannot be accepted. Apart from this aspect of the matter, certain submissions had been made that the pleas, which are being raised by way of rejoinder, are not only additional pleas but also are fresh and inconsistent pleas. As the plea of fraud in obtaining sale deed is concerned, though specifically an averment was made in the affidavit filed in support of the application, this Court is unable to find any such plea taken in the proposed rejoinder placed before this Court. It is no doubt true that in relation to the family arrangement the pleas now taken are that the said family arrangement is inadmissible and a further plea also had been taken that the same had not been acted upon. It is needless to say that the merits and demerits of a proposed amendment need not be put to test at this stage and these aspects may have to be decided at the appropriate stage in the light of the evidence which may be adduced by the parties. However, in the light of the elaborate rejoinder which had been permitted to be filed by the learned Principal Junior Civil Judge, Dhone, this Court is of the considered opinion that the petitioners and the other contesting defendants, if any, are to be permitted to put in the additional written statements in this regard, if they are so advised.

16. In the light of the reasons recorded above since the order under challenge does not suffer from any legal infirmity warranting interference under Rule 227 of the Constitution of India, the C.R.P. to be dismissed and accordingly dismissed at the stage of admission granting aforesaid liberty. No order as to costs.