

(2001) 08 KAR CK 0082

In the Karnataka High Court

Case No : Civil Revision Petition No. 3244 of 2000

Sri Mohammed Ali and Another

APPELLANT

Vs

Smt. Khutejatul Kubra and Others

RESPONDENT

Date of Decision : 01-08-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 7

Citation : (2001) 4 KCCR 2748

Hon'ble Judges : N. Kumar, J

Bench : Single Bench

Advocate : Shantha W. Joshi, for Anantha Mandgi, for the Appellant; G. Balakrishna Shastry, for Respondents 1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

N. Kumar, J.—The short point that arise for consideration in the Civil Revision Petition is whether the Defendants can raise a new plea or a new claim by way of an additional written statement under Order 8, Rule 9 Code of Civil Procedure.

2. The Plaintiffs have filed a suit for partition and for separate possession of their 1/4th share in the suit schedule property. The Defendants have filed a written statement contesting the said claim. In the written statement they have taken up a contention firstly that the sale in favour of the Plaintiffs by the first Defendant is not valid and legal and it does not bind the other Defendants. Secondly they contend it a pre-emptive right to purchase that 1/4th share from the first Defendant and when the Plaintiffs have purchased the 1/4th share in contravention of the pre-emption right, no title passes to them. Thirdly, they have contended the sale transaction in favour of the Plaintiffs is collusive and a sham transaction and title does not pass. On these pleadings, the trial Court has framed issues. It is thereafter the present application I.A. 5 is filed purporting to be under Order 8, Rule 9 CPC for permission to file an additional written statement. In the additional written statement the plea they want to raise is the Plaintiffs are Benamidars of their husbands and therefore the sale deed under

which Plaintiffs claim title do not confer title and in the absence of husbands being made parties the suit is not maintainable. The said application was opposed by the Plaintiffs. On consideration of the rival contentions, the trial Court has rejected the said application. It is against the said order the present revision is filed.

3. Learned Counsel for the Petitioners submit that in law plea, which is inconsistent with the original stand, could be raised by way of additional written statement. Further she contends the plea now sought to be raised by way of additional written statement namely the nature of transaction is already pleaded in the original plaint. Therefore it cannot be said that it is a new plea and therefore she contends the impugned order cannot be sustained and therefore it is liable to be set-aside.

4. Sri G. Balakrishna Shastry, learned Counsel for the Respondents submit though under Order 8, Rule 9 the Court is empowered to grant permission to file an additional written statement by way of subsequent pleadings such subsequent pleadings contain a new claim which is not already pleaded earlier, then the same cannot be allowed. In that regard he points out Order 6, Rule 7 CPC categorically states that 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. Therefore he contends if the Defendants want to raise a new claim by way of additional statement, the same is clearly barred under Order 6, Rule 7 CPC . Therefore the order passed by the Court below is perfectly legal and does not call for interference.

5. Smt. Shantha Joshi, learned Counsel for the Petitioners relies on a judgment of the Supreme Court in the case of (1994) 2 SCC 29 (SC) and contends that it is open to the parties to raise even mutually inconsistent pleas and if the relief could be founded on the alternative plea it could be granted. In the aforesaid judgment the Supreme Court was considering the scope of an application under Order 6, Rule 17 and not under Order 8, Rule 9 of the CPC . Therefore the said judgment has no application to the facts of the case. On the contrary, it supports the contention of the learned Counsel for the Respondents that inconsistent pleas or alternative pleas should be raised by way of amendment of written statement and not by way of additional statement. The Learned Counsel for the Petitioners also relies on the case of S. Sridevi v. S. Vijay and Anr. reported in 1989 (1) Kar LJ 100 where it has been held that there is ample scope for the Court to apply its mind in each case to permit or not to permit additional written statement. It should not be denied for sake of mere denial. It should be allowed if there is no prejudice likely to be caused to the Plaintiff or any of the parties. There is no quarrel with the said proposition of law. The point is whether a new claim could be permitted to be raised by way of additional statement. If the additional written statement contain pleadings in support of the pleas, which are already taken in the written statement it, could be allowed. Therefore the said judgment also has no application to the facts of this case. Order 6, Rule 7 of CPC deals with

departure in pleadings which reads as under:

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.

6. A perusal of the aforesaid order makes it clear that if a party wants to plead a new ground of claim or a statement containing allegation of fact inconsistent with the previous pleadings of the party pleading the same shall be raised by way of amendment only. There is a total prohibition for pleading new claims and inconsistent statements by any other mode except by way of amendment to the existing pleadings. Though subsequent pleadings is permitted under Order 8, Rule 9 CPC the same cannot be made use for raising pleas which are altogether new and inconsistent with the original pleadings in the written statement. Order 6, Rule 7 CPC deals with departure from the previous pleadings, Order 6, Rule 17 CPC deals with the amendment of pleadings and Order 8, Rule 9 CPC deals with subsequent pleadings. When they are read together distinction becomes apparent. Then it is clear by way of subsequent pleadings under Order 8, Rule 9 CPC new claims and inconsistent pleas cannot be raised and for raising such pleas one has to resort to Order 6, Rule 17 CPC only.

7. In the instant case, when the Defendants want to set up a new claim they could not have done it by way of additional statement under Order 8, Rule 9. The contention that the plea now sought to be raised by way of additional written statement is already pleaded is concerned, it is factually incorrect and therefore there is no substance in the said contention. The Court below was fully justified in rejecting such an additional statement. I do not find any infirmity in the order passed by the Court below, which calls for interference. Accordingly, Civil Revision Petition is rejected.