

(2008) 12 MAD CK 0155

In the Madras High Court

Case No : C.R.P. (PD) No. 1640 of 2008 and M.P. No. 1 of 2008

V. Sridhar

APPELLANT

Vs

V. Srinivasan

RESPONDENT

Date of Decision : 08-12-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17
Constitution of India, 1950 — Article 227
Specific Relief Act, 1963 — Section 40
Tamil Nadu Court Fees and Suits Valuation Act, 1955 — Section 25(d)
Transfer of Property Act, 1882 — Section 69, 69A

Citation : (2009) 1 CTC 516

Hon'ble Judges : S. Rajeswaran, J

Bench : Single Bench

Advocate : P.B. Balaji, for the Respondent

Final Decision : Dismissed

Judgement

S. Rajeswaran, J.—This Civil Revision Petition is filed against the Order dated 26.03.2008 passed in I.A. No. 8878 of 2004 in O.S. No. 1403 of 2004 on the file of the XIV Assistant Judge, City Civil Court, Chennai. The plaintiff in O.S. No. 1403 of 2004 is the revision petitioner before this Court. He is aggrieved by the order of the Trial Court made in I.A. No. 8878 of 2004 filed by him under Order 6, Rule 17, C.P.C. on 6.03.2008, dismissing the Application.

2. The revision petitioner herein as plaintiff filed O.S. No. 1403 of 2004 for passing a decree for redemption of mortgage deed dated 15.9.1993, for Rs. 60,000/- (Document No. 1831/93), Mortgage Deed dated 17.9.1993, for Rs. 80,000/- (Document No. 1846/93), Mortgage Deed dated 20.9.1993, for Rs. 60,000/- (Document No. 1868/93) as discharged and direct the defendant in the Suit to return the mortgage deeds and the title deeds of the suit property to the plaintiff and also to direct the defendant to cancel the mortgage deeds and consequently grant injunction restraining the defendant from bringing the suit property for private auction.

3. As per the Plaint averments, the respondent/defendant's father, Thiru Vajjiravelu (since deceased) is the brother-in-law of the revision petitioner/plaintiff and the plaintiff approached the said Thiru Vajjiravelu for a loan on the property of the plaintiff bearing Door No. 10, Rengappa Reddy Street, West Mambalam, Chennai-33. In the year 1993, the plaintiff's brother-in-law, Thiru Vajravelu paid a total sum of Rs. 2,00,000/- on various dates as loan to the plaintiff and obtained mortgage deeds from the plaintiff. According to the plaintiff, at the time of execution of the mortgage deeds, his brother-in-law obtained the mortgage deeds in the name of his son Thiru V. Srinivasan who is the defendant in the suit, it is admitted by the plaintiff in the plaint that, he borrowed a sum of Rs. 2,00,000/- on various dates and executed three registered mortgage deeds. On the date of the first mortgage, the plaintiff handed over all the title deeds of the suit property to his brother-in-law, Thiru Vajravelu on 13.03.1995. and the plaintiff paid the entire principal money of the mortgage loans of Rs. 2,00,000/- to his brother-in-law by way of Banker's Cash order dated 13.03.1995 and thus, he discharged the entire mortgage loans on the suit property.

4. But, his brother-in-law did not return the title deeds of the suit property and due to their close relationship, the plaintiff did not force him to return the document. Thiru Vajravelu passed away in the year 1998 and thereafter, the plaintiff asked the defendant to return the documents, for which, the defendant informed him that the mortgage deeds and the title deeds were misplaced by his father and he would return the same as and when they are traced.

5. But, to his shock and surprise, the defendant issued a notice demanding the entire principal and interest from 1.1.1998 to 31.12.2003 amounting to a sum of Rs. 2,92,000/- and also claimed with a forged Pro-note for Rs. 50,000/- with interest of Rs. 30,000/-, in all aggregating to a total of Rs. 5,72,000/-. It is the case of the plaintiff that he never borrowed any loan on the alleged pro-note and he also paid the entire mortgage loan also. Hence, he filed O.S. No. 1403 of 2004 for the aforesaid reliefs.

6. The respondent/defendant filed a written statement and the Suit is being contested. Pending Suit, the revision petitioner/plaintiff filed I.A. No. 8878 of 2004 under Order 6, Rule 17, C.P.C. to permit him to amend the Plaint. In the affidavit filed in support of I.A. No. 8878 of 2004, it is stated by the revision petitioner/plaintiff that in order to purchase the suit property, he approached his brother-in-law, Thiru Vajravelu during June/July 1993 as his brother-in-law was doing money lending business. He borrowed money from his brother-in-law and purchased the suit property and got it registered which was later on renovated by him. After the purchase of the property, he gave the original title deeds in respect of the suit property to his brother-in-law as securities for the amounts advanced and he was not executed any instrument in his favour. According to him, he has not created any registered mortgage deeds over the said property in favour of his brother-in-law. There was an arrangement between him and his

brother-in-law, according to which, he was paying the interest to his brother-in-law during his lifetime and in fact the entire loan amount was settled by him by making a payment of Rs. 2,00,000/- on 13.3.1995, according to which, the said loan was closed once and for all. Since his brother-in-law promised to deliver the title deeds, he did not insist for the return of the documents immediately. However, his brother-in-law passed away in 1998 and after his demise, he received a notice dated 9.1.2004 issued by the respondent/defendant, demanding for redemption of his property on payment of loan amount with accrued interest amounting to Rs. 5,72,000/- and also threatened to bring the property to sale by invoking Section 69A of the transfer of Property Act.

7. It is the further case of the revision petitioner/plaintiff in I.A. No. 8878 of 2004, that he was treated for his heart ailment at Miot Hospital, Manapakkam and since he was in a state of shock, he could not recapitulate the events that had taken place during the lifetime of his brother-in-law.. However, at his request, his neighbour sought the help of an Advocate, Thiru K. Kamaraj, who issued a reply notice without properly understanding the crux of his case. The said advocate engaged another Advocate, Thiru P. Somasundaram to file the present Suit in O.S. No. 1403 of 2004 for redemption of his property without understanding the nature of transactions he had with his brother-in-law. According to the revision petitioner/plaintiff, all the three mortgage deeds namely:

1. Mortgage deed dated 15.9.1993 for Rs. 60,000/-
2. Mortgage deed dated 17.9.1993 for Rs. 80,000/-
3. Mortgage deed dated 20.9.1993 for Rs. 60,000/-

are all nothing but a rank forgery committed by the respondent/defendant with a view to indulge in unjust enrichment and throttle the revision petitioner/plaintiff to knock away his property. It is his further case that these mortgage deeds have been registered by indulging in impersonation. Hence, a necessity has arisen to file an Application under Order 6, Rule 17, C.P.C. to amend the averments made in the Plaint.

8. The revision petitioner/plaintiff has sought for the following amendments as contained in the Petition filed in I.A. No. 8874 of 2004:

Petition under Order 6, Rule 17 of C.P.C., 1908

For the reasons stated in the accompanying affidavit, it is most humbly and respectfully prayed by the petitioner/plaintiff to amend the pleadings as under:

(a) paragraph 4 of the Plaint to be read as:

The plaintiff submits that he has borrowed a sum of Rs. 2,00,000/- (Rupees two lakhs only) on various dates from late M. Vajravelu by handing over the original title deeds in respect of the property situate at No. 10, Rangappa Street, West Mambalam, Chennai-33 for his custody till repayment of the loan with interest

and did not execute the alleged mortgage deeds, viz. (i) mortgage deed dated 15.9.93 for a sum of Rs. 60,000/- and registered as document No. 1831/93 in the office of the Sub Registrar, T. Nagar, (ii) mortgage deed dated 17.9.93 for a sum of Rs. 80,000/- and registered as document No. 1868/93 in the office of the Sub Registrar, T. Nagar, in favour of the defendant herein.

(b) to permit me too incorporate the following paragraph as 13(b) of my Plaint under Court Fee:

for a declaration that the alleged mortgage deeds viz., (i) mortgage deed dated 15.9.93 for a sum of Rs. 60,000/- and registered as document No. 1831/93 in the office of the Sub-Registrar, T. Nagar, (ii) mortgage deed dated 17.9.93 for a sum of Rs. 80,000/- and registered as document No. 1846/93 in the office of the Sub-Registrar, T. Nagar, and (iii) mortgage deed dated 20.9.93 for a sum of Rs. 60,000/- and registered as document No. 1868/93 in the office of the Sub-Registrar, T. Nagar in favour of the defendant herein are all illegal, invalid and non-est in the eyes of law and consequently values the reliefs at Rs. 1,000/- each and pays a Court fee of Rs. 75.50 each u/s 25(d) of the Tamilnadu Court fees and suits valuation act, 1955 r/w Act 17 of 2003, and in all Rs. 226.50.

(c) to permit me too incorporate the following paragraph as 14(b) of my Plaint under prayer portion:

for a declaration that the alleged mortgage deeds viz. (i) mortgage deed dated 15.9.93 for a sum of Rs. 60,000/- and registered as document No. 1831/93 in the office of the Sub-Registrar, T. Nagar, (ii) mortgage deed dated 17.9.93 for a sum of Rs. 80,000/- and registered as document No. 1846/93 in the office of the Sub-Registrar, T. Nagar, and (iii) mortgage deed dated 20.9.93 for a sum of Rs. 60,000/- and registered as document No. 1868/93 in the office of the Sub-Registrar, T. Nagar in favour of the defendant herein are all illegal, invalid and non-est in the eyes of law and declare the same as illegal, void and vitiated by forgery and fraud and consequently not binding upon them plaintiff.

(d) to permit to include the following additional prayers as 14(c) & 14(d) as under:

Prayer: 14(c):

for a declaration that the equitable mortgage created in favour of late M. Vajravelu in respect of the suit property situate at No. 10, Rangappa Street, West Mambalam., Chennai 33 is deemed to have been discharged pursuant to the payment made by me by way of a Pay order bearing No. 261999 dt. 13.3.95 drawn on Punjab National Bank, Teynampet, Chennai favouring late M. Vajravelu and consequently direct the legal heir of late M. Vajravelu, viz., the defendant herein to deliver to the plaintiff all the original title deeds in respect of the suit property which have been handed over to the defendant's father by the plaintiff herein for his custody at the time of availing certain financial assistance.

Prayer 14(d):

to direct the defendant herein to execute a registered acknowledgement in writing to the effect that the interest created by the plaintiff in favour of late M. Vajravelu by way of equitable mortgage in respect of the suit property for the financial assistance availed by him, has been extinguished" and pass such further or other orders as this Hon"ble Court may deem fit and proper in the facts and circumstances of the case and thus render justice.

9. This Application has been resisted by the respondent/defendant by filing a counter, wherein it is stated that after clearly admitting that he has executed three mortgage deeds, in the Plaint, it is not open now to the revision petitioner to say that he never borrowed nor executed any mortgage deeds in favour of the respondent/defendant. It is pointed out in the counter affidavit that to the legal notice dated 13.1.2004 sent by the respondent/defendant, the revision petitioner/plaintiff sent a reply dated 1.3.2004, admitting that the revision petitioner/plaintiff had borrowed a total sum of Rs. 2,00,000/- and executed three registered mortgage deeds dated 15.9.1993, 17.9.1993 and 20.9.1993. It is further stated by the respondent/defendant that when he tried to bring the mortgaged property to public auction u/s 69 of the Transfer of Property Act on 26.3.2004, the above Suit was filed by the revision petitioner/plaintiff for redemption of the three mortgage deeds executed by him and also sought for an interim injunction restraining the respondent/defendant from bringing the mortgaged property to auction sale. The respondent/defendant has entered appearance as Caveator and after hearing both the sides, a conditional order was passed by the Trial Court directing the revision petitioner/plaintiff to deposit a sum of Rs. 2,00,000/- on or before 22.4.2006. As the deposit was not made, the interim injunction granted was later on vacated.

10. Again when the respondent/defendant tried to bring the mortgaged property on sale, on 28.5.2004, the plaintiff changed his counsel and filed two Petitions i.e., one for amendment and one for injunction. Hence, he prayed for the dismissal of the Amendment Petition.

11. The Trial Court by order dated 26.3.2008 dismissed I.A. No. 8878 of 2004 by holding that a brand new case was now being substituted by the revision petitioner/plaintiff and such a Petition could not be permitted. Aggrieved by the same, the plaintiff in O.S. No. 1403 of 2004 has filed the above Revision Petition under Article 227 of the Constitution of India.

12. Heard the learned counsel for the revision petitioner and the learned counsel for the respondent/Caveator. I have also gone through the documents and judgments filed in support of their submissions.

13. The learned counsel for the petitioner submits that the petitioner is an uneducated person and he has sworn to wrong pleadings due to the ill advice of his erstwhile counsel and therefore he should not be made to suffer. He further pointed out that the application for amendment of pleading has been filed immediately on coming to know about the inadvertent mistakes that have crept

in the Complaint averments. He further adds that the Amendment Petition ought to have been allowed by the Trial Court for determining the real question in controversy and for avoiding multiplicity of the proceedings. In support of his submissions, the learned counsel for the revision petitioner relied on the following decisions:

hiru Thiru Alankadu Immudi Ahora Dharma Sivachariar Aiyra Vaisya Madam Vs. Udumalpet Samayapuram Ayira Vaisya Sangam,

2. Kaliathal Vs. Murugathal and Others

3. Commissioner of Income Tax Vs. Andhra Pradesh State Road Transport Corporation,

4. Alamelu Ammal and others v. Kuppan and another, 2007 (4) CTC 308;

5. Usha Balashaheb Swami and Others Vs. Kiran Appaso Swami and Others,

6. Chinnammal and Periyasamy Vs. Manickam @ Sellappan and Others

14. Per contra, the learned counsel for the respondent submits that the amendment sought for by the revision petitioner/plaintiff will cause serious injustice to the respondent/defendant and no amendment is to be allowed if it prejudices the rights acquired by the other party. He further submits that having categorically admitted that he executed the three mortgage deeds in the complaint and the reply notice, it is not open to him, now, to say that these 3 documents came into existence due to forgery and impersonation. The learned counsel points out that such mutually destructive pleadings ought not to be allowed by way of amendment and therefore he submits that the order of the Trial Court is in consonance with the settled principles of law in this regard and the same need not be interfered with by this Court under Art. 227 of the Constitution of India.

15. I have considered the rival submissions carefully with regard to facts and citations:

(1) In Thiru Alankadu Immudi Ahora Dharma Sivachariar Aiyra Vaisya Madam Vs. Udumalpet Samayapuram Ayira Vaisya Sangam, this Court set out the following guidelines while considering an Application filed under Order 6, Rule 17, C.P.C.:

(1) The general rule is that a party is not allowed by amendment to set up a new case or a new cause of action particularly when a Suit on new case or cause of action is barred.

(2) It is well recognized that where the amendment does not constitute the additional of a new cause of action or raise a different case, but amounts to no more than a different or additional approach to the same facts, the amendment will be allowed even after the expiry of the statutory period of limitation.

(3) The object of Courts and rules of procedures is to decide the rights of the parties and not to punish them for their mistakes. Further, a party is strictly not entitled to rely on the statute of limitation when what is sought to be brought in

by the amendment can be said in substance to be already in the pleadings sought to be amended.

(4) Even though the amendment sought to be made is subject to law of limitation, if the cause of action is not going to be changed, it is open to the affected party to take necessary steps for amendment of the Plaint. No doubt, no amendment will be allowed to introduce a new set of ideas to the prejudice of any right acquired by any part of lapse of time.

(5) For merely allowing an Application for amendment, there is no adjudication of the merits of the amended pleas introduced that the merits of the amended pleas have got to be adjudicated upon after allowing the opposite side to put-forth additional pleadings in answer to the same and that certainly the additional pleadings may take in also the plea of bar of limitation.

(6) By allowing the amendment, no injury or injustice is caused to the other side. No jurisdictional error is also involved in this case because of the amendment being ordered. The Amendment Application should be allowed, since it is not going to change the nature of the plea nor does it affect the rights of the defendants. The defendants are entitled to put-forward all their contentions even after the amendment is allowed.

(7) The question of limitation should not have been decided by the Court below at present, since it is a question to be decided on merits with oral and documentary evidence. At present, we are concerned with the Amendment Application, which is governed only under Order 6, Rule 17, C.P.C. The Amendment Application should be allowed, if it is not going to change the nature of Suit nor does it affect the rights of the defendants.

(8) The basic structure of the Suit is not altered by the proposed amendment. What is sought to be changed is the nature of relief sought for by the plaintiff. In the opinion of the Trial Court, it is open to the plaintiff to file a fresh Suit and that is one of the reasons, which has prevailed with the Trial Court. We fail to understand, if it is permissible for the plaintiff to file an independent Suit, why the same relief, which could be prayed for in a new Suit, cannot be permitted to be incorporated in the pending Suit.

(9) Where a Suit was filed without seeking an appropriate relief, it is a well settled rule of practice not to discuss the Suit automatically, but to allow the plaintiff to make necessary amendment, if he seeks to do so.

(10) Pre-trial amendments are allowed more liberally than those which are sought to be made after the commencement of the trial or after conclusion thereof. In former case, generally, it can be assumed that the defendant is not prejudiced because he will have fully opportunity of meeting the case of the plaintiff as amended. In the latter cases, the question of prejudice to the opposite party may arise and that shall have to be answered by reference to the facts and circumstances of each individual case.

(11) The law in this regard is quite clear and consistent that there is no absolute rule that in every case where a relief is barred because of limitation an amendment should not be allowed. Discretion in such cases depends on the facts and circumstances of the case. The jurisdiction to allow or not allow an amendment being discretionary, the same will have to be exercised on a judicious evaluation of the facts and circumstances. If the granting of an amendment really subserves the ultimate cause of justice and avoids further litigation, the same should be allowed.

(12) In regard to the stand of the defendants that the declaration sought by the plaintiffs is barred by limitation, there is dispute and it is not an admitted fact. While the defendants pleaded that under Entry 58 of the Schedule to the Limitation Act, the declaration sought for by the plaintiffs in this case ought to have been within three years when the right to sue first accrued, the plaintiffs contend that the same does not fall under the said entry but falls under Entry 64 or 65 of the said Schedule to the Limitation Act, which provides for a limitation of 12 years, therefore, according to them, the prayer for declaration of title is not barred by limitation. In such a situation, where there is a dispute as to the bar of limitation, the amendment sought could not be declined. The dominant purpose of allowing the amendment is to minimize the litigation. The plea of limitation, being disputed, could be made a subject-matter of the issue, after allowing the amendment prayed for.

(2) In Kaliathal Vs. Murugathal and Others this Court observed as under:

12. As already stated, here is a case in which the petitioner seeks a declaration in her favour by filing an Application to reopen her case to file an additional written statement to declare her as one of the legally wedded wife. On the very same ground, she filed a Suit for injunction against the I.O.C.L., for injuncting them not to disburse the retirement benefits, which is also based on the same reason. Hence, it is not a new case projected by the petitioner herein.

13. As already stated, the rustic people, who depend upon the advise of the counsel appearing for them, cannot be faulted and that did not take due diligence while filing their earlier written statement. Furthermore, the amendment, if allowed, that would avoid multiplicity of proceedings by filing another Suit, which also avoid the conflicting judgments rendered by the Court in a suit filed by the respondents for declaration and the Suit to be filed by the petitioner seeking same prayer in a subsequent Suit. Having regard to the above said facts, this Court is of the considered view that the interest of justice would be met if the petitioner is allowed to raise the pleas by paying necessary fee. The necessary corollary would be the order of the Trial Court non-suiting the petitioner on pedantic technicalities has to be set aside and the same is set aside and the Revision is allowed. It is needless to say that all the defence the respondents are having legally and factually can be agitated before the Trial Court. As the matter is pending nearly for a decade, the parties are directed to get along with the Suit and the Trial Court is further directed to proceed with the

Suit on a day to day basis upon passing the order in the Application, which is the subject matter of the Revision and conclude the same as expeditiously as possible, at least within a period of four months from the date of receipt of copy of this order.

(3) In Commissioner of Income Tax Vs. Andhra Pradesh State Road Transport Corporation, a Full Bench of this Court answered the reference as under:

12.00 Result:

In the result, the reference is answered holding:

(1) that the delay in filing the Application for amendment of the pleadings is not fatal when no serious prejudice is shown to have caused to the opposite party so as to take away any accrued right and the Court should take notice of the subsequently events in order to shorten the litigation to preserve and safeguard the rights of both the parties and to sub serve the ends of justice and while doing so, the Court was not justified in allowing or disallowing the amendments so as to defeat the valuable rights of the parties and amendments of pleadings should be allowed which are necessary for determination of the real controversy in the Suit and while doing so, the Court should not go into the correctness or falsity of the main case and it should not record the finding on the merits of the amendment as it should be done only during the trial of the Suit.

(2) According to the Proviso to sub-section (2) of Section 40 of the Specific Relief Act, the Court has no option to allow the amendment for adding a prayer for damages. This being the provision of law, the same should be allowed.

(3) The Proviso to Order 6, Rule 17 of Act 22 of 2002 is applicable to the pleadings instituted prior to 1.7.2002 and while considering the Proviso to Order 6, Rule 17, the Court has to examine in detail and commencement of trial must be understood as final hearing of the Suit i.e., examination of witnesses, filing of documents, addressing of arguments, etc. and the Court should not forget its unfettered discretion to allow the amendment after applying itself the judicial discretion, if there is no negligence on the part of the party.

(4) Before parting with the decisions, we are tempted to cite a paragraph from a case AIR 1922 249 (Privy Council)

All rules of Court are nothing but provisions intended to secure the proper administration of justice, and it is therefore essential that they should be made to serve and be subordinate to that purpose, so that full powers of amendment must be enjoyed and should always be liberally exercised, but nonetheless no power has yet been given to enable one distinct cause of action to be substituted for another, nor to change, by means of amendment, the subject-matter of the Suit.

Keeping the above principles, the Court of Law has to dispense the justice.

(4) In Alamelu Ammal and others v. Kuppan and another, 2007 (4) CTC 308, this

Court observed as under:

5. It is not in dispute that the plaintiff has filed the sale deed dated 10.2.1994. But by mistake the Plaint has been drafted as if the property ha been purchased on 10.2.1974 and the relief of easementary right by prescription has been sought for accordingly. Since the sale is only of the year 1994, the plaintiff has come forward with the Amendment Application, that is, claiming the relief of declaration of absolute title. Though normally amendment for the very prayer in the Plaint, cannot be entertained, that too after coming into force of the Amending Act 2002 of the C.P.C., when the matter has been posted for arguments, taking into consideration the peculiar facts and circumstances of the case viz., the very document shows that sale is only in the year 1994 and the real relief sought for could be is only for declaration of title, in the interest of justice, the plaintiff cannot be thrown out to prosecute the real relief. For the mistake committed while drafting the pleadings, the plaintiff cannot be made to suffer. Therefore, I do not find any irregularity or infirmity in the order of the learned District Munsif, Tiruvannamalai.

(5) In Usha Balashaheb Swami and Others Vs. Kiran Appaso Swami and Others, the Hon"ble Supreme Court held as under:

17. From a bare perusal of Order 6, Rule 17 of C.P.C., it is clear that the Court is conferred with power, at any stage of the proceedings, to allow alteration and amendments of the pleadings if it is of the view that such amendments may be necessary for determining the real question in controversy between the parties. The Proviso to Order 6, Rule 17 of C.P.C., however, provides that no application for amendment shall be allowed after the trial has commenced unless the Court comes to a conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial. However, Proviso to Order 6, Rule 17 of C.P.C. would not be applicable in the present case, as the trial of the Suit has not yet commenced.

18. It is now well-settled by various decisions of this Court as well as those by High Courts that the Courts should be liberal in granting the prayer for amendment of pleadings unless serious injustice or irreparable loss is caused to the other side or on the ground that the prayer for amendment was not a bona fide one. In this connection, the observation of the Privy council in the case of AIR 1922 249 (Privy Council) may be taken note of. The Privy Council observed:

All rules of Courts are nothing but provisions intended to secure the proper administration of justice and it is, therefore, essential that they should be made to serve and to subordinate to that purpose, so that full powers of amendment must be enjoyed and should always be liberally exercised, but nonetheless no power has yet been given to enable one distinct cause of action to be substituted for another, nor to change by means of amendment, the subject matter of the Suit.

19. It is equally well settled principle that a prayer for amendment of the plaint

and a prayer for amendment of the written statement stand on different footings. The general principle that amendment of pleadings cannot be allowed so as to alter materially or substitute cause of action or the nature of claim applies to amendments to Plaint. It has no counterpart in the principles relating to amendment of the written statement. Therefore, addition of a new ground of defence or substituting or altering a defence or taking inconsistent pleas in the written statement would not be objectionable while adding, altering or substituting or altering a defence or taking inconsistent pleas in the written statement would not be objectionable while adding, altering or substituting a new cause of action in the plaint may be objectionable.

20. Such being the settled law, we must hold that in the case of amendment of a written statement, the Courts are more liberal in allowing an amendment than that of a plaint as the question of prejudice would be far less in the former than in the latter case (see *B.K.N. Narayana Pillai Vs. P. Pillai and Another*, and *Baldev Singh and Others, etc. Vs. Manohar Singh and Another, etc.*, Even the decision relied on by the plaintiff in *Modi Spinning (supra)* clearly recognizes that inconsistent pleas can be taken in the pleadings. In this context, we may also refer to the decision of this Court in *Basavan Jaggu Dhobi v. Sukhnandan Ramdas Choudhary* In that case, the defendant had initially taken up the stand that he was a joint tenant along with others. Subsequently, he submitted that he was a licensee for monetary consideration who was deemed to be a tenant as per the provisions of Section 15A of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1974. This Court held that the defendant could have validly taken such an inconsistent defence. While allowing the amendment of the written statement, this Court observed in *Basavan Jaggu Dhobi's* case (*supra*) as follows:

As regard the first contention, we are afraid that the Courts below have gone wrong in holding that it is not open to the defendant to amend his statement under Order 6, Rule 17, C.P.C. by taking a contrary stand than was stated originally in the written statement. This is opposed to the settled law open to a defendant to take even contrary stands or contradictory stands, the cause of action is not in any manner affected. That will apply only to case of the plaint being amended so as to introduce a new cause of action.

21. As we have already noted herein earlier that in allowing the amendment of the written statement a liberal approach is a general view when admittedly in the event of allowing the amendment the other party can be compensated in money. Technicality of law should not be permitted to hamper the Courts in the administration of justice between the parties. In the case of *L.J. Leach and Company Ltd. Vs. Jardine Skinner and Co.*, said provision lays down that, "where at the first hearing of a Suit it appears that the parties are not at issue on any question of law or of fact, the Court may at once pronounce the judgment". Even that apart, the defendants-respondent did not think it fit to move any Amendment Application for getting out of such admission till the plaintiff moved an Application for appointment of receiver regarding admitted items of

properties. It is only thereafter that the Application for amendment was moved. Learned Trial Judge was right when he observed that even the ground made out in the Application were not justified. Consequently, there is no question of taking inconsistent stand which would not have affected pre-judicially the plaintiff as wrongly assumed by the High Court.

(6) In Chinnammal and Periyasamy Vs. Manickam @ Sellappan and Others this Court held that amendment cannot be denied on technical ground as denial would lead to multiplicity of proceedings.

16. Citing the above decisions, the learned counsel for the revision petitioner submits that the Trial Court has committed an illegality in not allowing the Amendment Petition filed in I.A. No. 8878 of 2004. But the learned counsel for the respondent relying on the very same decisions submits that the Trial Court has correctly dismissed the Amendment Petition.

17. After hearing the arguments and after going through the above decisions, I am of the considered view that the Trial Court has correctly decided I.A. No. 8878 of 2004 by dismissing the same.

18. The plaintiff has clearly admitted in the Plaint that he executed three mortgage deeds dated 15.9.1993, 17.9.1993 and 20.9.1993. Even before filing the Suit, in the reply notice dated 1.3.2004 sent by the revision petitioner to the respondent/defendant, it was clearly admitted by the revision petitioner/plaintiff that he executed all the three mortgage deeds which were also registered as Document Nos. 1831/93, 1846/93 and 1868/93.

19. With the above pleadings, the revision petitioner filed the Suit for redemption of the three mortgage deeds and even obtained an interim injunction which was later on vacated for not complying with the conditional order. In such circumstances, the revision petitioner/plaintiff cannot now be permitted to take completely a different stand by stating that he never executed the three mortgage deeds and they came into existence due to forgery and impersonation. This is totally a new case and the new pleadings are quite opposite to his earlier pleadings and therefore, they are mutually destructive pleadings, which could not be allowed by the Courts. Further, due to the admissions made by him in the earlier pleadings, a right has accrued to the other side, which could not be taken away by the revision petitioner/plaintiff by seeking to substitute a diametrically opposite pleadings with his earlier pleadings. Further, the reasons given by the revision petitioner for making wrong statements in the Plaint is that the two counsel who filed the Suit and sent the reply notice could not understand the case properly and therefore, for the mistake committed by their counsel, he should not be made to suffer. Such kind of pleadings by the litigants casting aspersions on the advocates could not be entertained and on that basis, the amendment as sought for should not be granted to the litigants.

20. Even in the decisions relied on by the learned counsel for the revision petitioner, it has been clearly stated that the amendment should not be allowed:

1. If such amendment introduces a new case other than what was originally pleaded; and

2. If the prayer for amendment of pleadings causes serious injustice to the other side.

21. In the light of the peculiar facts of the present case, the amendments sought for are nothing but trying to introduce a totally new case and if such amendments are allowed, it will certainly cause great prejudice to the other side.

22. Hence, I am of the considered view that such Amendment Petitions should not be allowed and the Trial Court has rightly dismissed the I.A. No. 8878 of 2004, which does not warrant any interference by this Court under Article 227 of the Constitution of India. In the result, the Civil Revision Petition is dismissed. No costs. The connected Miscellaneous Petition is also dismissed.