

Subramanian and Three Others Vs. Jayaraman

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Court : Chennai

Decided On : Jul-13-1999

Reported in : 1999(3)CTC52; (1999)3MLJ216

Judge : V. Kanagaraj, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) -- Orders 6, 7 and 8, Rule 9

Appeal No. : C.R.P. No. 1322 of 1996

Appellant : Subramanian and Three Others

Respondent : Jayaraman

Advocate for Def. : Mr. P.S. Balasubramaniyan, for ;Mr. G. Rajagopalan, Adv.

Advocate for Pet/Ap. : Mr. R. Muralidharan, Adv.

Judgement :

Judgment Pronounced by V. Kanagaraj, J.

1. The above Civil Revision Petition has been filed against the fair and decretal order dated 15.4.1996 made in I.A.No. 595 of 1996 in O.S.No. 129 of 1995 by the Court of Additional District Munsif, Cuddalore in so far dismissing an application filed under Order 8, Rule 9 of the Civil Procedure Code pleading thereby to grant leave for reception of the additional written statement filed therewith.

2. In the affidavit filed in support of the petition, it is contented that they found that necessary particulars and clarifications in respect of the prior proceedings were to be given in full; that they have to put forward the plea of res judicata and estoppel with reference to the facts of the case, in which even no prejudice will be caused to the other side also and hence praying for leave to be granted to receive the additional written statement filed therewith.

3. The respondent has also filed his counter stating thereby that the additional written statement is directly contradictory to the previous written statement further containing inconsistent stands; that the petitioners cannot introduce new and diagonally opposite stand, which is not permitted by Law; that the averments regarding the 'B' schedule properties are also untenable; that the Commissioner got appointed and he filed a report, for which the petitioners have not filed any objection and hence no objection regarding the identity of the property could be raised at a later stage and would oppose the application stiffly.

4. The trial Court, in consideration of the above contentions of parties and further citing what was held in a case reported in : [1977]1SCR728 , the sum and substance of which is that if the defendants by means of amendment want to introduce an entirely different case and if permitted would prejudice the other side, and further stating that a commission got appointed by the Court and the Commissioner on inspection of the suit properties had also filed detailed report for which no objection was raised by the petitioners and hence they will not have any thing more than what is contemplated in the Commissioner's Report and would ultimately dismiss the petition without costs.

5. Aggrieved, the petitioners before the Trial Court came forward to prefer the above Civil Revision Petition on certain grounds as offered in the Memorandum of Revision Petition.

6. During arguments, the learned counsel appearing for the petitioners would contend that it is a suit for bare injunction and among the two schedules of the suit properties, 'A' and 'B', 'A' schedule properties belong to the plaintiff and 'B' schedule is a non-existent and imaginary one, wherein certain rights are claimed by the plaintiff. The learned counsel for the petitioners would also cite a judgment

reported in Chinnappan v. Ellammal, 97 L.W. 611 wherein it is held that

'There is thus no fetter on the power of Court requiring a written statement or an additional written statement from any of the parties at any time. But if the party wants to file an additional written statement, then under Order 8, Rule 9 Cr.P.C., he has to obtain the leave of Court, as without it, no pleading subsequent to the written statement can be presented into Court. Order 6, Rule 17 C.P.C. enables the Court to allow either party to alter or amend the pleading at any stage of the proceeding, but such amendments shall be made as may be necessary to determine the real controversy between the parties. The power of Court is not in any manner curtailed or circumscribed by the other provisions occurring in Order 6 or Order .7. or even Order .8. C.P.C.'

7. In reply, the learned counsel appearing for the respondent would contend that the other side wants to file the additional written statement one year after filing the written statement; that the original written statement is vague and does not contain anything relevant and it does not deny the previous suit also; that in order to introduce new ground, as the original stand taken by the petitioners/defendants is in a quite contradictory manner, they have now come forward to file the present Interlocutory Application to grant leave to file the Additional Written Statement and hence if the leave is granted to the petitioners to present the additional written statement, much loss will be caused to his genuine interest besides being greatly prejudiced against and therefore, the learned counsel for the respondent would conclude saying that it is paramount on the part of the Court to decide whether under the circumstances of the case, the petitioners shall be allowed to present their additional written statement and pray the Court to dismiss the above Civil Revision Petition.

8. Prior to deciding the above revision petition it is necessary to see what is the Law on the subject, as contemplated under Order 8 Rule 9 of the Civil Procedure Code. Order 8 Rule 9 of the Civil Procedure Code reads:

'9. Subsequent Pleadings: No pleading subsequent to the written statement of a defendant other than by way of defence to a set-off or counter-claim 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 for presenting the same.'

Thus, the Rule says that other than by way of defence to a set- off or counter-claim, only with the leave of the Court pleading subsequent to the written statement shall be presented and it is upto the Court to decide and if it thinks fit, it could allow the presentation of the subsequent pleading of the defendant. In the present case on hand, only in compliance of the Rule, the petitioners have filed the above Interlocutory Application seeking leave of the trial Court to receive the additional written statement on grounds as alleged in the affidavit filed in support of the petition seen supra.

9. It is not the intention of the legislature that no pleading subsequent to the written statement should be allowed other than for reasons given therein. But the intention is that without the leave of the Court, no pleading subsequent to the written statement shall be presented. Hence, it goes without saying that the subsequent statement or additional statement could be filed only with the leave of the Court on such terms, as the Court thinks fit. The approach of Law in permitting the Court to grant leave in such cases is positive. But, the Court while granting the leave could direct the petitioner to comply with certain terms that the Court thinks fit and hence absolutely there is no impediment or hurdle or legal barrier put forth by the Rule in allowing any additional statement subsequent to the written statement and the only shot provided in the arms of the Court for granting leave is that it could allow the application on such terms as it thinks fit. The same power could also be suo motu exercised by the Court as per the concluding part of the Rule. The Rule has been liberally construed so far as the Court granting the leave to present such additional statements and discretion is given to the Court either to allow or to reject and while allowing it could do the same on such terms as the Court thinks fit. Therefore, it could be safely concluded that in all such cases, wherein the defendant approaches the Court with an application under Order 8 Rule 9 of the Civil Procedure Code praying to grant leave, Courts are expected to be liberal in granting the leave but of course on terms as the Court thinks fit in the circumstances of the individual case.

10. The lower Court itself has shown as to when the Court could reject the plea of the defendant in its order, citing the judgment reported in : [1977]1SCR728 wherein it is held that

'...by means of amendment the defendants wanted to introduce an entirely different case and if such amendments were permitted, it would prejudice the other side.'

What is to be decided, in the light of the above proposition of the Apex Court, by the Court dealing with the subject is to find out whether the defendant wants to introduce an entirely different case so as to prejudice the other side, provided he is permitted to carry out the amendments.

11. So far as the order of the lower Court is concerned, it is remarked that the additional written statement sought to be filed is quite contradictory to the earlier statement filed by the petitioners/defendants and further since the petitioners have not filed any objection to the Commissioner's Report, they are not entitled to be granted with the leave to present the additional statement as sought for in the petition and thus dismissed the petition filed by the petitioners/defendants. However, the requirements of the Rule and the proposition of Law held in the case cited supra are that the Court should take a lenient view in granting leave and if need be the leave could be granted on terms and that if the defendants introduce an entirely different case in the additional statement, so as to prejudice the other side, their application for leave is liable for rejection.

12. In answering these two points, the lower Court does not seem to have taken a liberal view with a positive approach as warranted by the Rule nor has the lower Court established as to how the petitioners wanting to introduce an entirely different case so as to cause prejudice to the other side. The vague reasons given by the lower Court that the additional written statement sought to be filed is quite contradictory to the earlier statement and that the petitioners have not filed any objections to the Commissioner's Report, are not the sufficient reasons or explanations sought for either by the Rule or by the proposition of the Apex Court. After all, on completion of every formality including such as one sought to be introduced by means of an additional written statement by the

petitioners/defendants, ultimately on a fair trial, affording with adequate opportunities for both parties to be heard in full, the suit is going to be decided by the trial Court on merits and on available evidence. While so, refusing to grant leave for presenting an additional written statement is nothing short of denial of an opportunity for the petitioners/defendants to exhaust their remedy. The defendants having failed to plead those sought to be introduced in their original statement, have now come for amending their statement and it is the hallmark or expectation of law that the trial should be held on all issues involved in the suit and with full opportunity for parties to exhaust their remedies. In the present case, moreover, the seriously objected portion of the additional written statement being the plea of res judicata and estoppel, both of which are quite legal, it is not reasonable to deny the petitioners from resorting to such legal questions, for the defendants in their considered opinion, however at a later stage, after filing of the written statement strongly feel that they could have recourse to such legal aspects. At the best, in the above circumstances, what the lower Court could have done is that it could have allowed the application of the petitioners/defendants on such terms as contemplated by the Rule since certain amount of hardship and inconvenience have been caused to the respondent/plaintiff.

In result, the above Civil Revision Petition is allowed setting aside the fair and decretal order dated 15.4.1996 made in I.A.No. 595 of 1996 in O.S.No. 129 of 1995 by the Court of District Munsif, Cuddalore. The Interlocutory Application filed by the petitioners herein before the trial Court in I.A.No. 595 of 1996 in O.S.No. 129 of 1995 is hereby allowed on condition that the petitioners/defendants pay a cost of Rs. 500 (Rupees Five Hundred Only) in favour of the respondent/plaintiff within fifteen days from the date of receipt of this order by the trial Court.

The above Civil Revision Petition is allowed in the above manner subject to the payment of costs by the petitioner to the respondent, as stated supra.