

Muthusamy Vs. Thangaraj

Muthusamy Vs. Thangaraj

SooperKanoon Citation : sooperkanoon.com/834355

Court : Chennai

Decided On : Jun-30-2005

Reported in : (2005)4MLJ119

Judge : M. Thanikachalam, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 8, Rule 9 - Order 6, Rule 17

Appeal No. : C.R.P. (PD) No. 478 of 2005 and C.M.P. No. 3715 of 2005

Appellant : Muthusamy

Respondent : Thangaraj

Advocate for Def. : P.K. Ramakrishnan, Adv.

Advocate for Pet/Ap. : K. Sultan Allowdhin, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

M. Thanikachalam, J.

1. The plaintiff is the revision petitioner.

2. The Revision petitioner has filed a suit against the respondent/ defendant for recovery of possession of the suit property with certain ancillary relief in respect of certain immovable property, which was opposed by the defendant by filing a written statement, at the first instance, dated 3.8.2004.

3. The parties went on trial on the basis of pleadings. It is an admitted position that examination of P.W.1 is on progress and it is reported, he has to be cross examined. At that stage, the defendant has filed a petition under Order 8, Rule 9, C.P.C., seeking permission of the Court to file additional written statement, raising certain pleas, which were not taken in the original written statement.

4. The trial Court, receiving objections for that application, namely I.A. No. 106 of 2005 and by going through the provisions of law, after hearing either side, felt that there is no bar for receiving the additional written statement and in this view to give a chance for the parties to agitate their demands fully, permission was granted to receive the additional written statement, by an order, dated 28.2.2005, which is under challenge in this revision.

5. With the consent of the parties, the revision itself is taken up for final hearing.

6. The submission of the learned Counsel for the revision petitioner that when the case is pending for the examination of P.W.1, as part heard, permission granted by the trial Court to receive the additional written statement is against law, appears to be not well founded, considering the scope of Order 8, Rule 9, C.P.C., as rightly claimed by the learned Counsel for the respondent. Further submission of the learned Counsel for the revision petitioner that the defendant has taken an inconsistent stand in the additional written statement, which should not be allowed also, appears to be not well founded, since by going through the additional written statement, it is seen, he had not abandoned the previous case, whereas he wants to add something more to the original written statement, which came to light after filing of the written statement. In this context, we have to see the original written statement as well as the additional written statement to some extent, not for the purpose of testing its acceptability or veracity, as the case may be.

7. The plaintiff/revision petitioner filed a suit, claiming title over the suit property as ancestral property as well as the same was outlined by way of family arrangement among the family members. Admittedly, whether it is trespass or otherwise, the plaintiff is out of possession and that is why the suit is laid for possession. In the written statement, the locus standi of the plaintiff to claim title over the suit property is questioned, further asserting that there was some sale agreement and in pursuance of the same, possession was entrusted to the party. Now, in the additional written statement, an attempt is made to say that the suit property does not belong to the family, since the revenue records, which was verified later, would reveal that the plaintiffs family is not entitled to the suit property. Further, an attempt is made in paragraph 6 of the additional written statement, projecting the sale agreement, for which also there is already a pleading.

8. True, as seen from the additional written statement, some new pleas have also been taken. Whether this new plea will prevent the plaintiff from succeeding in the case is a matter to be decided at the time of trial, not at the time of receiving the statement. Therefore, the additional written statement, wherein an attempt is made to explain the original statement, giving further particulars, cannot be labelled as entirely a new one, disowning the original case. In this context, we have to see the relevant provisions, namely Order 8, Rule 9, C.P.C. Order 8, Rule 9, C.P.C. reads:

'No pleading subsequent to the written statement of a defendant other than by way of defence to 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 of not more than thirty days for presenting the same.'

It does not say that no application for receiving the additional statement 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, as provided under Order 6, Rule 17, C.P.C. proviso. The legislators when amended the C.P.C. thought it fit not to allow the party to have amendment, as a matter of right, that too in a case where they had an opportunity to raise the same, at the time of filing the pleadings. But, when they come to Order

8, C.P.C., no such restriction has been imposed, thereby giving discretion to the Court concerned to allow the subsequent pleadings, for which it is not necessary whether that defence was available on the date of filing of the original written statement or not. Under Order 8, Rule 9, C.P.C., power is given to the Court to call for the written statement or additional written statement from any party, fixing time, not exceeding 30 days, thereby showing the provisions of Order 8, Rule 9, C.P.C. is liberal in its application, giving wide discretion to the Court, probably to give a chance to the parties, to agitate their right even raising subsequent pleas, for which, the Court should not be rigid. The Courts should exercise their discretion liberally, when it will not affect the right of the party.

9. In this case, the only grievance, if at all for the revision petitioner, as urged before me, must be that when P.W. 1 was in the box, that too pending cross examination, subsequent pleadings should not be allowed. By allowing the subsequent pleadings, the right of the plaintiff is not going to be affected and it is for the defendant to prove the subsequent pleadings by letting in evidence, since in the original written statement, he has opposed the claim of plaintiff. The plaintiff can also re-examine P.W.1, if he desires, with the permission of the Court, even to deny the allegations in the written statement. Thus, it is seen, ample opportunity is available to P.W.1, to deny or accept the case projected in the additional written statement, which would go to show, no prejudice would be caused to the plaintiff, though the suit is a part heard one. Order 8, Rule 9, C.P.C. does not say, after commencement of trial, no subsequent pleading shall be entertained by the Court, as said in Order 6, Rule 17, C.P.C. proviso.

10. Considering all these facts as well as in order to give an opportunity to the contesting defendant to raise the plea available, the trial Court has allowed the application to receive the additional written statement, in which I am unable to see any infirmity, warranting my interference.

11. The learned Counsel for the revision petitioner, to deny the additional written statement, sought support from the decision of this Court in *Devanbu v. Sundara Raj and Ors.*, : (2005)2MLJ41 , wherein this Court has taken a view that subsequent pleadings cannot be entertained, when the defendant had an

opportunity to raise the plea in the original written statement itself, i.e. 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. In the said case, it appears, plea of res judicata, which was available to the defendant on the date of filing of the written statement, was not raised, when it was sought to be raised, this Court has observed, such plea is deemed to have been waived. Here, this kind of situation is not available. In the affidavit, it is said, later verification of the revenue records reveals that the plaintiffs family is not entitled to the property or something like that and it cannot be said that the same was known to the defendant to raise in the original written statement. Therefore, in my considered opinion, the above ruling is distinguishable on facts, considering the reasons as said by me, supra also.

12. In *Murthi Gounder v. Karuppanna Gounder*, AIR 1976 Mad. 302, this Court has taken a view, permission sought after examination of witnesses by defendant to file additional written statement is not maintainable. From a reading of the above judgment, it is seen, in the original written statement, the defendant claimed that the road, which was in dispute, was laid only 5 months before, whereas in the additional written statement, an attempt is made to make out a case of easementary right of pathway extending over 12 years on the basis of the information acquired from the Panchayat record, thereby causing prejudice to the other side. Considering the factual situation, rejection of additional written statement by the Court was upheld and the same principle cannot be extended in this case, since evidence has to be recorded only hereafter, except P.W.1 was examined in part.

13. For the foregoing reasons, I conclude, there is no error in the order of the trial Court in allowing the petition to receive the additional written statement, warranting my interference under Article 227 of the Constitution of India, in view of the further fact, the parties are having a chance to agitate the same before the trial Court, thereby showing alternative remedy is also available, in which case, invoking Article 227 is not desirable.

14. In this view, the revision itself is not maintainable. Hence, the revision is dismissed. No costs. Consequently, connected C.M.P. is also dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com