

(2013) 11 MAD CK 0148

Madras High Court

Case No: C.R.P. (PD) No. 810 of 2010 and M.P. No. 1 of 2013

Ilayaperumal

APPELLANT

Vs

M/s. Madras Cements

RESPONDENT

Date of Decision: Nov. 8, 2013

Citation: (2013) 5 LW 488

Hon'ble Judges: K. Ravichandrababu, J

Bench: Single Bench

Advocate: Suhrit Parthasarathy for J. Ramakrishnan, for the Appellant; Rahul Balaji for Satish Parasaran, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

K. Ravichandrababu, J.

This Civil Revision Petition is filed against an order allowing the amendment of written statement filed by the respondent herein, who is the second defendant in O.S. No. 219 of 2006 on the file of the District Munsif Court, Ariyalur. The petitioner herein as the plaintiff filed the above said suit for declaration and for permanent injunction in respect of a property at Survey No. 302/7 measuring an extent of 0.91 cents out of 3.63 acres.

2. The second defendant viz., the respondent herein filed a written statement by admitting the fact that patta for Survey No. 302/7 measuring 3.63 acres stood in the name of one Natesan and the mother of the first defendant and that in the division, the northern half was allotted to the said Natesan and the southern half to the defendant's mother. It is also admitted by the second defendant that the first defendant has sold 63 cents in S. No. 302/7 in the southern portion to the second defendant by means of a sale deed dated 26.3.2007. After having said so in the written statement, the second defendant filed an application under Order 6 Rule 17 CPC seeking for amendment of his written statement and prayed for adding the word "denied" at paragraph 3 instead of the word "admitted" and further prayed for

striking out the entire paragraph 4 and to add another paragraph whereby stating that the first defendant, in whose name the patta for the entire suit items stands, has sold the suit items to the second defendant under a sale deed dated 19.7.2007. The remaining paragraphs 5 and 6 are also sought to be struck off.

3. The said amendment was opposed by the petitioner herein as the plaintiff by contending that the second defendant by way of amendment is taking totally a contradictory stand and the admission already made by him is sought to be denied. The Court below rejected the contention of the petitioner and allowed the amendment application by holding that the amendment is necessary and justifiable since what is sought to be introduced by way of amendment is only a fact which has been left out to be stated in the original written statement.

4. The learned counsel appearing for the petitioner submitted that the amendment contradicts the original stand taken by the second defendant and what was admitted by him cannot be subsequently denied by way of amendment. In support of his submission, he relied on the decisions reported in [Gautam Sarup Vs. Leela Jetly and Others](#), and [Kaliammal and Others Vs. P. Marimuthu and C.K. Selvaraj](#).

5. Per contra, the learned counsel appearing for the respondent submitted that the yardstick that applies to the amendment of plaint cannot be applied to the amendment of written statement. The defendant is entitled to take a contra stand by way of amendment. In support of his submissions the learned counsel relied on the following decisions:-

1. [Palaniammal Vs. V.K. Ramanathan and Others](#) ;
2. [Baldev Singh and Others Etc. Vs. Manohar Singh and Another Etc.](#) ;
3. [Rajesh Kumar Aggarwal and Others Vs. K.K. Modi and Others](#),
4. [Sushil Kumar Jain Vs. Manoj Kumar and Another](#),

6. Heard the learned counsel appearing on either side and perused the materials placed before me.

7. The petitioner before this court as the plaintiff filed the above said suit against one Subramanian for declaration and for permanent injunction in respect of 91 cents of land out of 3.63 acres at Survey No. 302/7 at Aanandavadi village. According to the plaintiff, out of total extent of 3.63 acres at the above said Survey Number, half of the land situated on the northern side belongs to the plaintiff's family and half of the land situated on the southern side belongs to the first defendant's family. A joint patta was issued in favour of the plaintiff's father and the defendant's mother. After the death of the plaintiff's father, there was a partition among the legal heirs and consequently, 1.82 cents of lands were allotted to the share of the plaintiff and his brother by name Nallamuthu. The defendant obtained patta in respect of the suit property also over which he has no right or title.

Therefore, he filed the suit against the said Subramanian as the defendant. In that suit the respondent herein was subsequently impleaded as second defendant who filed a written statement, wherein it is stated at paragraphs 3 and 4 as follows:-

3. The fact that originally patta for S.F. No. 302/7. Ac. 3.63 stood in the names of Natesa and the mother of defendant (namely Mookayee). In the division, the northern half was allotted to Natesan and the southern half to defendant's mother. This fact is also admitted.

4. The 1st defendant has sold 63 cents in S.F. No. 302/7 in the southern portion to this defendant by means of a registered sale deed dated 26.3.2007. This portion has nothing to do with the north-western 91 cents belonging to Nallamuthu.

8. After filing such written statement, the second defendant filed the amendment petition, where the relief sought for is as follows:-

Details of Amendment

1. In para 3 instead of "admitted" add "denied"

2. Strike out the entire para 4 and add as follows:-

The first defendant in whose name the patta for the entire suit item stands, has sold the suit item to this defendants under sale deeds dated 19.7.2007. So the possession has been delivered forthwith. The plaintiff has nothing to do with the suit item.

3. Strike out para 5 and 6.

9. A comparative study of the original written statement and the amendment sought to be made therein would show that the second defendant wants to take totally a contradictory stand and what he has admitted originally is sought to be denied by way of such amendment. Whether such amendment is permissible is the question that arises for consideration in this Civil Revision Petition. As an answer to the said issue, the decision of the Apex Court reported in [Gautam Sarup Vs. Leela Jetly and Others](#), relied on by the petitioner's counsel could be referred straight away wherein the facts of the said case before the Apex Court are as follows:-

The appellant therein filed a suit for declaration of his title to the suit properties and for a decree for permanent injunction. The respondent No. 6 therein as the defendant in the said suit filed a written statement admitting the averments made in the plaint. Thereafter, the respondent No. 6 therein filed another written statement denying and disputing the claim of the appellants in toto. She also filed an application for permission to take the first written statement off the records and to file another written statement.

The said application was allowed by the trial Court. A revision petition was filed by the appellant therein against the said order. The High Court while setting aside the said order of the trial Judge has directed to hold an enquiry as to whether the

respondent No. 6 ever engaged a counsel by name Vasudeva and ever signed the written statement, which has been placed on record and in the event of the findings of the said enquiry go in her favour, it will be open to her to file the second written statement or the one which has been filed by her may be explained. It was also observed by the High Court that respondent No. 6 therein is not deprived from filing an application under Order 6 Rule 17 CPC in case the findings are given against her. Thereafter, an enquiry was conducted and it was opined therein that the respondent No. 6 therein had in fact filed a written statement originally. Consequently, she filed an application for amendment of the original written statement, which came to be allowed by the trial Court. A revision filed before the High Court came to be dismissed against which the appeal was preferred before the Hon'ble Supreme Court. While considering the scope of Order 6 Rule 17 CPC more particularly with regard to the amendment of written statement, the Apex Court, after considering various decisions of the Hon'ble Supreme Court, has observed at paragraph Nos. 13, 16, 17, 18, 19 and 22 as follows:-

13. An admission made in a pleading is not to be treated in the same manner as an admission in a document. An admission made by a party to the lis is admissible against him proprio vigore.

...

16. A Three Judge Bench of this Court speaking through Ray, CJ in [Modi Spinning and Weaving Mills Co. Ltd. and Another Vs. Ladha Ram and Co.](#), opined:

10. It is true that inconsistent pleas can be made in pleadings but the effect of substitution of paras 25 and 26 is not making inconsistent and alternative pleadings but it is seeking to displace the plaintiff completely from the admissions made by the defendants in the written statement. If such amendments are allowed the plaintiff will be irretrievably prejudiced by being denied the opportunity of extracting the admission from the defendants. The High Court rightly rejected the application for amendment and agreed with the trial court.

17. A Two Judge Bench of this Court, without noticing the binding precedent in *Modi Spinning & Weaving Mills Co., Ltd and Another Vs. Ladha Ram & Co.*, (supra), in [Panchdeo Narain Srivastava Vs. Km. Jyoti Sahay and Another](#), , stated:

But the learned counsel for the respondents contended that by the device of amendment a very important admission is being withdrawn. An admission made by a party may be withdrawn or may be explained away. Therefore, it cannot be said that by amendment an admission of fact cannot be withdrawn.

Yet again, in [Akshaya Restaurant Vs. P. Anjanappa and Another](#), , the following observations were made by the Court at p.44 of MLJ:

5. We find no force in the contention. It is settled law that even the admission can be explained and even inconsistent pleas could be taken in the pleadings. It is seen that

in para 6 of the written statement a definite stand was taken by subsequently in the application for amendment it was sought to be modified as indicated in the petition. In that view of the matter, we find that there is no material irregularity committed by the High Court in exercising its power u/s 115 CPC in permitting amendment of the written statement.

[See also Basavan Jaggu Dhobi v. Sukhnandan Ramdas Choudhary

18. The question came up for consideration before another Division Bench in [Heeralal Vs. Kalyan Mal and Others](#), wherein noticing the aforementioned decisions, Modi Spinning & Weaving Mills Co., Ltd., and Another Vs. Ladha Ram & Co. (Supra) decision was followed. Akshaya Restaurant V. P. Anianappa and (supra) was held to have been rendered per incuriam.

Other decisions which were cited at the Bar were distinguished stating:

10. Consequently it must be held that when the amendment sought in the written statement was of such a nature as to displace the plaintiff's case it could not be allowed as ruled by a three-member Bench of this Court. This aspect was unfortunately not considered by the latter Bench of two learned Judges and to the extent to which the latter decision took a contrary view qua such admission in written statement, it must be held that it was per incuriam being rendered without being given an opportunity to consider the binding decision of a three-member Bench of this Court taking a diametrically opposite view.

11. We were then taken to another decision of this Court in the case of Panchdeo Narain Srivastava v. Jyoti Sahay. In that case the plaintiff was held entitled to amend his plaint by submitting that though earlier he stated that the defendant was uterine brother, the plaintiff by amendment in his plaint could submit that the defendant was his brother and the word "uterine" could be dropped. Even in that case the main case put forward by the plaintiff did not get changed as the plaintiff wanted to submit that the defendant was his brother. Whether he was uterine brother or real brother was a question of degree and depended on the nature of evidence that may be led before the Court. Therefore, the deletion of the word "uterine" was not found to be displacing the earlier case of the plaintiff. On the facts of the present case also, therefore, the said decision cannot be of any assistance to the learned counsel for the respondents.

12. In our view, therefore, on the facts of this case and as discussed earlier, no case was made out by the respondents, contesting defendants, for amending the written statement and thus attempting to go behind their admission regarding 5 out of 7 remaining items out of 10 listed properties in Schedule A of the plaint.

19. Heeralal V. Kalyan Mai and Others (supra) has been recently noticed by this Court in [Sangramsinh P. Gaekwad and Others Vs. Shantadevi P. Gaekwad \(Dead\) thr. Lrs. and Others](#), , wherein it is stated:

215. Admissions made by Respondent 1 were admissible against her proprio vigore.

216. In Nagindas Ramdas v. Dalpatram Ichharam this Court held:

... Admissions if true and clear, are by far the best proof of the facts admitted. Admissions in pleadings or judicial admissions, admissible u/s 58 of the Evidence Act, made by the parties or their agents at or before the hearing of the case, stand on a higher footing than evidentiary admissions. The former class of admissions are fully binding on the party that makes them and constitute a waiver of proof. They by themselves can be made the foundation of the rights of the parties. On the other hand, evidentiary admissions which are receivable at the trial as evidence, are by themselves, not conclusive. They can be shown to be wrong.

...

22. What, therefore, emerges from the discussions made hereinbefore is that a categorical admission cannot be resiled from but, in a given case, it may be explained or clarified. Offering explanation in regard to an admission or explaining away the same, however, would depend upon the nature and character thereof. It may be that a defendant is entitled to take an alternative plea. Such alternative pleas, however, cannot be mutually destructive of each other.

From the perusal of the above decision of the Apex Court, it is clear that though the defendant is entitled to take alternative pleas, such alternative pleas cannot be mutually destructive of each other.

10. In fact, the decision of the Apex Court reported in [Union of India \(UOI\) Vs. Pramod Gupta \(D\) by L.Rs. and Others](#), was also referred therein where it has been observed that by reason of such amendment if the claimant intends to resile from an express admission made by him, such application for amendment may not be allowed.

11. In another subsequent decision of the Apex Court reported in [Sushil Kumar Jain Vs. Manoj Kumar and Another](#), , it is observed at paragraphs 10,11,12 as follows:-

10. At this stage, we may remind ourselves that law is now well settled that an amendment of a plaint and amendment of a written statement are not necessarily governed by exactly the same principle. Adding a new ground of defence or substituting or altering a defence does not raise the same problem as adding, altering, substituting a new cause of action (See [Baldev Singh and Others Etc. Vs. Manohar Singh and Another Etc.](#),).

11. Similar view has also been expressed in [Usha Balashaheb Swami and Others Vs. Kiran Appaso Swami and Others](#), . It is equally well settled that in the case of an amendment of a written statement, the Courts would be more liberal in allowing than that of a plaint as the question of prejudice would be far less in the former than in the latter and addition of a new ground of defence or substituting or altering a

defence or taking inconsistent pleas in the written statement can also be allowed.

12. Keeping these principles in mind, let us now take up the question raised before us by the learned counsel for the parties. As stated herein earlier, the admission made by a defendant in his written statement can be explained by filing the application for amendment of the same. This principle has been settled by this Court in [Panchdeo Narain Srivastava Vs. Km. Jyoti Sahay and Another](#), , while considering this issue, held that the admission made by a party may be withdrawn or may be explained. It was observed in paragraph 3 of the said decision as follows:- "An admission made by a party may be withdrawn or may be explained away. Therefore, it cannot be said that by amendment, an admission of fact cannot be withdrawn....

12. In the above decision, no doubt, the Apex Court has observed that the admission made by a defendant in his written statement can be withdrawn or may be explained. To come to such conclusion the Apex Court has followed the decision made in the case of [Panchdeo Narain Srivastava Vs. Km. Jyoti Sahay and Another](#), . But the very same decision was considered by the Apex Court in Gautam Sarup case, at paragraph 17, which I have discussed in the earlier paragraphs.

13. Therefore, the Apex Court in the Gautam Sarup case, by following the decision of a three Judge Bench of the Apex Court made in the case of [Modi Spinning and Weaving Mills Co. Ltd. and Another Vs. Ladha Ram and Co.](#), came to the conclusion that the defendant is not entitled to take mutually destructive alternative pleas. Thus, it leads me to follow the decision of the Apex Court reported in reported in [Gautam Sarup Vs. Leela Jetly and Others](#), .

14. More over, it appears that the said decision made in Gautam Sarup's case was not placed before the Apex Court while considering the case of [Sushil Kumar Jain Vs. Manoj Kumar and Another](#), . Even otherwise, when the facts of that case are perused, it shows that they are definitely distinguishable with that of the case on hand. Originally the pleading therein was that there were different tenancies in respect of the premises in dispute. Such plea of different tenancies was sought to be amended as single tenancy in that case. Therefore, considering the said factual aspects and considering that it is only an explanation of the earlier stand, the Apex Court has taken such a view in that matter. As the facts of the present case are totally different, the said decision is not applicable to the present case.

15. The learned counsel for the petitioner further relied on a decision reported in [Kaliammal and Others Vs. P. Marimuthu and C.K. Selvaraj](#), wherein a learned single Judge of this Court has followed the Gautam Sarup case and held at Paragraph No. 7 as follows:-

7. Following the ratio laid down by the Apex Court, it ought to be observed that though the defendant is entitled to raise inconsistent pleadings in a suit, he is legally precluded from taking any plea, which is destructive to the earlier stand, that would tend to injure one plaintiff's right which accrued to him by valuable admissions

available in the original written statement. Having consciously divulged in the written statement that he was ready and willing to execute the sale deed and was actually waiting for the plaintiff in the Sub Registrar's Office for a considerable time, it is disastrous and opposed to settled principles of law and the same can be a classical instance of "destructive plea".

16. Per contra, the learned counsel appearing for the respondent relied on the decisions reported in [Palaniammal Vs. V.K. Ramanathan and Others](#) ; [Baldev Singh and Others Etc. Vs. Manohar Singh and Another Etc.](#), ; [Rajesh Kumar Aggarwal and Others Vs. K.K. Modi and Others](#), and [Sushil Kumar Jain Vs. Manoj Kumar and Another](#), to contend that the defendant is entitled to take inconsistent plea and that the amendment should be allowed in the larger interest of doing full and complete justice to the parties before the Court.

17. There is no quarrel about the said proposition. But at the same time, if the inconsistent plea happens to be destructive in nature of the original plea, then such plea cannot be permitted by way of amendment as held in Gautam Sarup's case. At this juncture, the observation of the Hon"ble Supreme Court made in [Modi Spinning and Weaving Mills Co. Ltd. and Another Vs. Ladha Ram and Co.](#), is relevant to be quoted as hereunder:-

10. It is true that inconsistent pleas can be made in pleadings but the effect of substitution of paras 25 and 26 is not making inconsistent and alternative pleadings but it is seeking to displace the plaintiff completely from the admissions made by the defendants in the written statement. If such amendments are allowed the plaintiff will be irretrievably prejudiced by being denied the opportunity of extracting the admission from the defendants. The High Court rightly rejected the application for amendment and agreed with the trial court.

Considering the above decision of the Three Judge Bench of the Hon"ble Supreme which has been followed in the decision of the Apex Court made in [Gautam Sarup Vs. Leela Jetly and Others](#), , I am of the view that the order passed by the Court below is not sustainable and consequently the Civil Revision Petition is allowed and the application filed by the respondent in I.A. No. 616 of 2009 in O.S. No. 219 of 2006 is dismissed. Consequently, the connected M.P. is closed. No costs.