

IN THE COURT OF V ADDL. CITY CIVIL COURT
AT BENGALURU
(CCH.No.13)

Present: **Sri. C.D. KAROSHI**, B.A., LL.M.
V ADDL.CITY CIVIL & SESSIONS JUDGE,
BENGALURU

Dated this the 30th day of January, 2021.

O.S. No: 4413/2020

PLAINTIFF: Sri. Hemanth.S
(By. Sri. SDM, Advocate.)

V/s

DEFENDANT: Sri. Kantharaj.C. Reddy
(By. Sri. IMM, Advocate)

IA.No.3

Plaintiff/
Applicant: Sri. Hemanth.S
(By. Sri. SDM, Advocate.)
V/s

Defendant/
Opponent: Sri. Kantharaj.C. Reddy
(By. Sri. IMM, Advocate)

ORDERS ON IA No. 3

The applicant/plaintiff has filed the present application under Order 8 Rule 9 r/w Section 151 of Code of Civil Procedure seeking leave of the court to file replication and to take it on record for the reasons assigned in the affidavit.

2. It is arrayed in the accompanying affidavit that, the defendant appeared and filed written statement and when he has been served with copy dated 02/12/2020 he came to know that defendant has made baseless allegation of suppressing the material facts against the plaintiff, consequently he has filed the replication with true facts against the written statement. Further it is arrayed that the defendant is suppressing the material facts and twisting the facts by making all hectic efforts to dispossess the plaintiff from his lawful possession and enjoyment over the suit schedule premises without recourse to law by using illegal force and threat, as such if the defendant succeeds in his attempts then the rights of the plaintiff to hold the possession till his mortgage money is repaid completely with expenses will be jeopardized and will be put to great hardship. The plaintiff is depending on his profession and schedule premises is a law office, as such he should be protected in accordance with law until mortgage amount is repaid with expenses promptly. On these grounds prayed for allowing the application.

3. Per contra, it is contended in the objections filed by the learned counsel for defendant that, the application filed under Order 8 Rule 9 r/w Section 151 of Code of Civil Procedure by the plaintiff seeking leave of the court to file attached replication is wholly false, frivolous and vexatious and same is not maintainable either in law or on facts and

liable to be dismissed. Further contend that, when there is a set-off or counter claim, the pleadings would come to an end with filing of written statement. The defendant has also filed written statement on 22/10/2020 without any set off or counter claim and there is no provision under the law to file rejoinder or replication by the plaintiff to the written statement, as such application is devoid of merits and liable to be dismissed. Further the replication sought to be filed by the plaintiff is nothing but a desperate attempt to set off an altogether new case inconsistent with the case set out in the plaint which is impermissible in law. Further contend that, the plaintiff has not approached the court with clean hands and suppressed/concealed several material facts and now intend to introduce different version to the case already made out to make illegal and unjust enrichment at the cost of the defendant which lacks bonafide and it has not been filed to attain the ends of justice. Further the plaintiff has also suppressed receipt of security deposit of Rs.7,65,000/- and has willfully not informed the same to the court. On these grounds prayed for rejecting the application.

4. Heard and perused the written arguments along with material on record.

5. The point that arises for my consideration is:

Whether I.A. No.3 filed under Order 8 Rule 9 r/w Section 151 of Code of Civil Procedure by the learned counsel for plaintiff deserves to be allowed?

6. My answer to the above point is in the negative, for the following:

REASONS

7. The plaintiff has filed the above numbered suit for the relief of permanent injunction stating that, he was inducted into the possession of schedule premises as per rental agreement dated 25/05/2011 by the defendant on basis of monthly rent and thereafter continued to be in the possession of the same based on mortgage deed dated 13/12/2012 and extension of mortgage dated 21/01/2016 till the month of December 2019 subject to repayment of security deposit/mortgage amount of Rs.12,00,000/- along with expenses as per the terms of the aforesaid deeds, but without repayment of the said amount the defendant making hectic efforts to dispossess him from the lawful possession and enjoyment over the suit schedule property, as such he cannot be dispossessed without due process of law.

8. Per contra, the defendant appeared through his counsel and filed written statement along with objections to I.A. contending that, the plaintiff has filed false and frivolous suit by concealing and suppressing the material fact before this court regarding payment of Rs.7,65,000/-, as such contention of the plaintiff cannot be accepted.

9. In turn the plaintiff has come up with the present application seeking permission to file replication to the written statement under Order 8 Rule 9 CPC stating that mortgage deeds are valid till entire mortgage amount is paid in favour of the plaintiff and defendant has made baseless allegations by suppressing the material facts, as such submission of true facts by way of replication is necessary.

10. The learned counsel for plaintiff vehemently argued and also filed written submissions by reiterating the averments of the plaint/replication and prayed for allowing the application.

11. Per contra, the learned counsel for defendant also argued and filed written submissions by relying on a decision of our Hon'ble High Court reported in AIR 2011 KAR P13 (Glen Fredric Picardo Vs. Rodney Picardo and others), prayed for dismissal of the application as not maintainable.

12. A plain reading of the provisions of Order 8 Rule 9 reads thus:-

9. Subsequent pleading:- No pleading subsequent to the written statement of a defendant other than by way of defence to a set of (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".

13. On perusal of the aforesaid provisions go to shows that Order 8 Rule 9 of CPC does not provide for a reply by the plaintiff subsequent to the written statement unless a plea of set off or counter claim pleaded by the defendant.

14. In this regard our Hon'ble High Court has observed in the decision referred supra that, subsequent pleading by way of replication by plaintiff when there is neither a set off nor a counter claim put forth in the written statement is not permissible.

15. Therefore having regard to the facts and circumstances of the case and in view of the principles enunciated in the decision referred supra by the learned counsel for defendant I am of the opinion that the proposed reply statement i.e. replication has to be excluded from the pleadings by rejecting the present application. For these reasons any amount of oral or written arguments filed by the learned counsel for plaintiff do not have weight and cannot be accepted. On the other hand oral/written arguments filed by the learned counsel for defendant holds good. Consequently, I.A. No.3 is liable to be dismissed with cost. Hence, I answer point raised for consideration is in the negative and proceed to pass the following:

:ORDER:

I.A. No.3 filed under order8 rule 9 r/w Section 151 of C.P.C by the learned counsel for plaintiff is hereby dismissed on cost of Rs.500/-.

(Dictated to the Stenographer directly on computer, typed by her, corrected by me, signed and then pronounced in the office on this the 30th Day of January 2021)

(C.D.KAROSHI)
V ADDL.CITY CIVIL & SESSIONS JUDGE
BENGALURU

