

IN THE COURT OF THE PRL.SENIOR CIVIL JUDGE

AT: HAVERI

Present: GUDI VASUDEV RADHAKANT,
B.com., LL.M.
PRINCIPAL SENIOR CIVIL JUDGE, HAVERI

DATED: THIS THE 5th DAY OF FEBRUARY 2021

OS No.108/2016

PLAINTIFF: : Basavaraj s/o Mahadevappa Malagi,

V/s

DEFENDANTS: : Ningappa s/o Mahadevappa Malagi,
and others.

PARTIES TO I.A.No.XII

Applicant: : Basavaraj s/o Mahadevappa Malagi,
(Plaintiff) Age: 43 years, Occ: Agriculture,
R/o: Devagiri-Yallapur,
Haveri taluk and district.

(By Sri. S.S. Hiretanad, Advocate)

-Vs-

Opponent: : Ningappa s/o Mahadevappa Malagi
Defendants Age: 51 years, Occ: Agriculture and
Service, R/o: Devagiri-Yallapur,
Now at Navodaya School Hangal,
Hangal taluk. And others.

(By Sri. S.D. Malali, Advocate)

ORDER ON I.A.NO.XII

Advocate for plaintiff has filed this application under Order VIII Rule 9 read with Section 151 of Code of Civil Procedure, 1908 with a prayer to grant leave to the plaintiff to file his re-joinder to the written statement of defendants by way of additional pleadings for fair and effective adjudication of real dispute between the parties.

2. This application is supported by the affidavit of Plaintiff, wherein he has stated that, he has filed this suit for partition and separate possession against the defendants. Defendant No.2 has filed his delayed written statement on 19.09.2016 by falsely contending that property bearing R.S.No.74/1 of Devgiri-Yallapur village and Bank deposit were bequeathed in his favour by his deceased father by executing the Will and he claimed title himself. Defendant No.2 has also furnished the alleged Will before the court on 29.11.2017 along with other documents with a leave of the court. From the written statement of defendant No.2, he came to know that defendant No.1 and 3 colluding with defendant No.2 to engulf the entire family properties and to defraud his legitimate share over the suit properties, have got created and concocted the false documents, on the basis of which the defendant No.2 is claiming right over the suit properties illegally.

Therefore, he is constrained to file re-joinder by way of additional pleadings which is necessary and expedient for effective adjudication of real dispute between the parties. Otherwise, it is impossible to adjudicate the dispute finally and effectively. On all these grounds, he sought for allowing the application.

3. This application is opposed by the defendants by filing objections interalia denying the entire contents of application as well as affidavit. It is contended that, this application is filed just to protract the litigation, as defendants have filed written statement on 19.09.2016. Plaintiff has not filed re-joinder within 30 days from the date of filing of written statement. Therefore, belated re-joinder cannot be entertained. Now plaintiff is seeking permission to file re-joinder. This application is barred by law of limitation. Defendants have not at all sought any counter claim. Therefore, question of filing re-joinder does not arise at all in the eye of law. On all these grounds, they sought for rejection of the application.

4. Heard arguments of learned counsel for plaintiff and learned counsel for the defendants at length on I.A.No.XII. Scrutinized the records of the case.

5. Having heard arguments and on scanning of records of the case, following points arise for consideration:

1. Whether plaintiff is to be permitted to file re-joinder to the written statement of defendants by way of additional pleadings?

2. What Order?

6. My findings to the above points are as under:

Point No.1 : In the Affirmative

Point No.2 : As per the final order,
for the following:

REASONS

7. REASONING ON POINT NO.1:- As a prelude, it is necessary to note factual version in brief. Plaintiff has filed this suit for partition and separate possession of his legitimate share in suit Schedule properties. Defence of the defendants lies in contending that their father had bequeathed the suit schedule properties in favour of defendant No.2 by executing the will.

8. By virtue of proposed re-joinder, plaintiff has denied the contents of written statement with regard to execution of will in favour of defendant No.2 by his father and also the sound and disposing state of mind of his father at the time of alleged will. He has also denied the factum of attestation.

9. Now the core question arises for determination is whether plaintiff is to be permitted to file re-joinder by way of additional pleadings. Filing of additional pleadings is governed by Order VIII Rule 9 of Code of Civil Procedure, 1908 which reads thus:

“[9. Subsequent pleadings:- *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]”.*

10. On perusal of this provision, it consists of two parts. First part pertains to filing of subsequent pleading by way of defence to set off or counter claim and second part consists of discretion of the court that it 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 30 days for presenting the same. First part is restricted only to defence to counter claim and set off. Second part is applicable when matter in controversy is to be decided by looking to the additional pleadings of the parties.

11. What has been argued by the learned counsel for defendants is that, defendants have not sought any counter claim or set-off. Therefore, question of filing re-joinder does not arise at all. In this connection he has relied upon the decision of **Hon'ble High Court of Karnataka reported in 2010 (4) KCCR 3014 (Mr. Glen Fredric Picardo Vs. Mr. Rodney Picardo since deceased by L.Rs.)** wherein it is held as under:

“13. In my opinion the pleadings would be complete with the filing of the plaint, written statement or additional written statement to a set-off or any counter claim with the leave of the Court. Any addition or deletion to the said pleadings can be by way of an amendment being permitted under Rule 17 of Order VI C.P.C and not by granting leave to file replication. For amendment of pleadings, the permission of the Court is required to be obtained, as is clear from the words contained in Rule 17 of Order VI C.P.C. In the said view of the matter, the Trial Court is right in recording the finding that, when once the defendant places his defence by way of a written statement, there is no provision to file a replication to the written statement”.

12. It is also true that, the principles of this decision are to the effect that, plaintiff cannot file a replication to the written statement. At the same time, it is equally important to note that, subsequently **Hon'ble Supreme Court of India in the decision reported in (2014) 4**

SCC 196 (Pratima Chowdhury Vs. Kalpana Mukherjee and Another) held as under:

*"26. First and foremost, it surprises us that Co-operative Tribunal, as also, the High Court excluded from consideration, the factual position expressed in the rejoinder filed by the appellant (before the Arbitrator). In excluding the aforesaid factual position, the Co-operative Tribunal and the High Court did not rely on any provision of law nor was any reliance placed on any principle accepted and recognized in legal jurisprudence. It is not a matter of dispute, that after Kalpana Mukherjee and the Society were permitted to file written replies before the Arbitrator, the rejoinder filed thereto on behalf of Pratima Chowdhury, was permitted to be taken on record. It is not in contention, that in the written replies filed before the Arbitrator, Kalpana Mukherjee had adopted inter alia the stance, that consideration was paid to Pratima Chowdhury in lieu of the transfer of flat no. 5D to her name, even though the documents relied upon by the rival parties, expressed otherwise. A number of documents not mentioned in the Dispute Case filed by Pratima Chowdhury were also relied upon by Kalpana Mukherjee. **Pleadings between the parties could be considered as complete, only after Pratima Chowdhury was permitted to file a rejoinder (in case she desired to do so).** She actually filed a rejoinder which was taken on record by the Arbitrator. Both parties were permitted to lead evidence, not only on the factual position emerging from the complaint filed by Pratima Chowdhury and the written replies filed in response thereto (by Kalpana Mukherjee, and the Society), but also, the*

factual position highlighted by Pratima Chowdhury in her rejoinder affidavit. It is, therefore, not on the basis of the pleadings of the parties, but also on the basis of the evidence led in support of the aforesaid pleadings, that the Arbitrator had recorded his findings in his award dated 5.2.1999. We are therefore of the view, that the Arbitrator had acted in accordance with law, and therefore the exclusion from consideration, of the factual position asserted by Pratima Chowdhury in her rejoinder, by the Co-operative Tribunal and the High Court was wholly unjustified”.

13. Principles emerging from this decision make it crystal clear that, pleadings of the parties complete only when plaintiff/s file/s re-joinder. This decision also make it clear that, plaintiff is entitled to file re-joinder to the written statement of the defendant.

14. It is needless to emphasis that, when there is conflict between the decision of Hon'ble High Court of Karnataka and Hon'ble Supreme Court of India, obviously the decision of Hon'ble Supreme Court of India being highest court of the land is having the force of precedent as per Article 141 of Constitution of India. Therefore, the decision relied upon by the learned counsel for the defendants cannot be pressed into service.

15. Yet again Hon'ble High Court of Karnataka in a recent decision in **W.P. No.208208/2017, dated: 14.03.2018**

(Vijayakumar S/o Late Basappa Vs. Amruth S/o Annarao Ganje and Others) has held as under:

"6. Admittedly, in the written statement which is filed by first defendant neither he has sought either set-off or counter claim. Therefore in the normal circumstance the legal position should be, there is no scope of filing of counter to the same, but in the fact situation the facts are slightly different inasmuch as the first respondent herein who is brother of deceased Rajamma and also brother-in-law of deceased Chandrappa is trying to stake claim to the ancestral property of Chandrappa under the guise of a Will said to have executed by his sister Rajamma widow of Chandrappa. As against that plaintiffs would state that they have right of succession under [Section 15](#) of the Hindu Succession Act i.e., in the absence of any legal heir to the said property under Schedule-I of [Section 8](#) of Hindu Succession Act, the said property would devolve upon them under Schedule-II to said section. According to plaintiff, the Will which is now set-up is coming before the Court for the first time which was not seen in the earlier three rounds of litigation. Thereby indicating that the possibility of the said Will may be a concocted one to deprive the petitioner and respondent Nos.3 and 4 in this proceedings, who are original legal heirs of deceased Chandrappa and as contemplated under [Section 8](#) of Hindu Succession Act where their right to succeed is recognized under Schedule-II. Therefore, in the fact situation by way of counter the same is required to be pleaded at the very first instance, thereafter it would not be open for them to adduce evidence on that in the absence of pleading in the form of

counter in the trial which will be held subsequently.

7. In that view of the matter it is stated that filing a counter in denying the genuinity of the said Will is necessary. In that background if Order 8 Rule 9 is re-read, what could be seen is the later part of the Rule 9 would indicate that upon the leave of the Court, upon such terms as the Court thinks fit the counter may be filed. It is further observed that while permitting such statement to be filed the Court is also required to grant permission for filing of written statement or additional statement on the said counter statement filed. Therefore, to say that there is absolute bar to in permitting the plaintiff to file reply to the written statement is not correct, it always depends on the fact situation of each case".

16. Principles emanating from this decision make it crystal clear that, there is no absolute bar under Order VIII Rule 9 of Code of Civil Procedure, 1908, for the plaintiff to file replication in the absence of counter claim or set off.

17. Now turning to consider whether there are grounds to allow the plaintiff to file re-joinder. Evidently, defendant No.2 in his written statement has categorically contended that suit properties were bequeathed in his favour by his father by executing the Will, which necessarily to be controverted by the adversary. Under these circumstances, the only way left out the plaintiff to

controvert the assertions of written statement of defendants is to file re-joinder only.

18. The factual score can be tested from another stand point also. **Hon'ble Supreme Court of India in a decision reported in (2009) SCCR 495 (K.Laxmanan Vs. Thekkayil Padmini and Others)** has held that pleadings include replication. For convenient purpose, relevant portion of the judgment extracted herebelow:

“31.Pleadings as we understand under the Code of Civil Procedure (for short the "Code") and as is defined under the provision of Rule 1 Order VI of the Code consist only of a plaint and a written statement. The respondents/plaintiff could have filed a replication in respect to the plea raised in the written statement, which if allowed by the court would have become the part of the pleadings, but mere non filing of a replication does not and could not mean that there has been admission of the facts pleaded in the written statement.”

19. The principles of this decision make it crystal clear that, plaintiff is also entitled to file re-joinder. Regarding the point of limitation, **Hon'ble Supreme Court of India in a decision reported in (2005) 4 SCC 480 (Kailass vs Nankhu)** has held that the time framed prescribed by Order VIII Rule 1 of CPC is directory in nature. The same analogy equally applies to the

provisions of Order VIII Rule 9 of CPC. Therefore, considering all these aspects of the case and totality of the circumstances, to facilitate plaintiff put forth his case in respect of assertions made in the written statement of defendant No.2, it is necessary to grant leave to him to file re-joinder. Hence, I answer point No.1 in the **Affirmative.**

20. ON POINT NO.2:- For the reasons assigned above, I proceed to pass the following:

ORDER

I.A No.XII filed by the plaintiff under Order VIII Rule 9 read with Section 151 of Code of Civil Procedure, 1908 is hereby **Allowed.**

Plaintiff is permitted to file additional re-joinder to the written statement of defendant No.2.

Considering peculiar circumstances of this case, there will be no order as to costs.

(Dictated to the Stenographer on Computer, transcript revised, corrected, signed and then pronounced in the open Court on this the 5th day of February, 2021.)

**(GUDI VASUDEV RADHAKANT)
PRL. SENIOR CIVIL JUDGE & CJM
HAVERI.**