

APHC010226722024



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3333]

THURSDAY, THE THIRTEENTH DAY OF NOVEMBER
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE SMT JUSTICE V.SUJATHA

CIVIL REVISION PETITION NO: 1195/2024

Between:

1. PAKALAPATI MADHAVI,, W/O RAMBABU, AGED ABOUT 39 YEARS,
OCC - HOUSE WIFE R/O.PLOT NO.2, RR NAGAR, HAL COLONY,
OLD BOINAPALLI SECUNDERABAD

...PETITIONER

AND

1. VALAVALA SRIRAM, S/O VENKANNA, AGED ABOUT 63 YEARS,
OCC - BUSINESS R/O H. NO. 20-1-1-3/A W GARDENS
ARYAPURAM, RAJAMAHENDRAVARAM.

2. Y MOHANA RAO, S/O VENKATARATNAM, AGED ABOUT 64 YEARS,
OCC - CULTIVATION R/O. D NO.5-148, PASIVEDALA, KOVVURU
MANDAL.

3. Y DORA BABU, S/O. MOHANA RAO, AGED ABOUT 30 YEARS, OCC
- CULTIVATION, R/O. D.NO 5-148, PASIVEDALA, KOVVURU
MANDAL

4. P MAMATHA, W/O NAGA VENKATA ROVER, AGED ABOUT 30
YEARS, OCC - HOUSE WIFE, R/O. D.NO. 3-65/1, CHINNAYIGUDEM,
DEVARAPALLI MANDAL, WEST GODAVARI DISTRICT.

...RESPONDENT(S):

Petition under Article 227 of the Constitution of India,praying that in the circumstances stated in the grounds filed herein,the High Court may be pleased to may be pleased to allow the present Civil Revision Petition by setting aside the orders dated 15.02.2024 passed in I.A.No.2096 of 2023 in O.S.No.160 of 2017, on the file of Honble Judge, Family Court cum Cum IX Additional District and Sessions Judge East Godavari At Rajamahendravaram and consequently dismiss I.A.No.2096 of 2023 as prayed for in the interest of justice and pass

IA NO: 1 OF 2024

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased may be pleased grant stay of all further proceedings in O.S.No.160 of 2017, on the file of Hon'ble Judge, Family Court cum Cum IX Additional District and Sessions Judge East Godavari at Rajamahendravaram pending disposal of above Civil Revision Petition and pass

IA NO: 1 OF 2025

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased pleased to extend the interim orders dated 20.09.2024 passed in I.A No. 01 of 2024 in CRP. No. 1195 of 2024 and pass

IA NO: 2 OF 2025

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased may be pleased to extend the interim orders dated 20.09.2024 passed in IA. No. 01 of 2024 in CRP. No. 1195 of 2024 and pass

IA NO: 3 OF 2025

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased pleased to extend the interim orders dated 20.09.2024 passed in IA. No. 01 of 2024 in CRP. No. 1195 of 2024 and pass

IA NO: 4 OF 2025

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased may be pleased to extend the interim orders dated 20.09.2024 passed in IA. No. 01 of 2024 in CRP. No. 1195 of 2024 and pass

Counsel for the Petitioner:

1.S SRIDHAR

Counsel for the Respondent(S):

1.P RAJESH BABU

The Court made the following:

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India by the petitioner/plaintiff aggrieved by the order passed by the learned Family Court-cum-IX Additional District and Sessions Judge, East Godavari at Rajamahendravaram, dated 15.02.2024 in I.A.No.2096 of 2023 in O.S.No.160 of 2017, whereby, the Court below allowed the application filed by the respondent No.1/defendant No.4 under Order VIII Rule 9 read with Section 151 of the Code of Civil Procedure (for short 'CPC'), permitting him to file additional pleading by way of additional written statement.

2. Brief facts of the case are as under:

For the sake of convenience, the parties are referred to as they were referred in suit.

(a) Defendant No.1 is the father of the plaintiff and defendant Nos.2 and 3. The plaint schedule property is the ancestral property of plaintiff and defendant Nos.1 to 3. Defendant No.4 purchased the plaint schedule property from defendant Nos.1 and 2 without the knowledge of the plaintiff. The plaintiff, being a coparcener to the joint family, having equal rights over the plaint schedule property, filed O.S.No.160 of 2017 before the Court below seeking the following relief:

“(i) for partition of the plaint schedule property into four equal shares and to allot one such share to the plaintiff and put her in exclusive possession of her share.

(ii) for granting mesne profits to be decided on a separate petition that would be filed under order 12 Rule 20 C.P.C....”

(b) Pending the said suit, defendant No.4 filed an application under Order VIII Rule 9 read with Section 151 of CPC stating that the defendant No.1 has two surviving sisters by name ‘Parimi Chandram and Chitturi Ammaji’ and that non-inclusion of such coparceners is bad in law in a suit for partition; as such, he requested the Court below to accord permission to file additional pleading by way of additional written statement. The Court below, on 15.02.2024, allowed the application filed by defendant No.4 by observing that the sisters of defendant No.1 would be necessary parties to the subject suit. Aggrieved by the same, plaintiff filed this revision petition.

3. When this revision petition came up for hearing on 20.09.2024, this Court granted interim stay of all further proceedings in O.S.No.160 of 2017 on the file of the Court of the learned Family Court-cum-IX Additional District and Sessions Judge, East Godavari at Rajamahendravaram.

4. Heard Sri. S. Sridhar, learned counsel for the petitioner and Sri. P. Rajesh Babu, learned counsel for respondent No.1. Perused the entire material available on record.

5. Admittedly, the plaintiff filed the O.S.No.160 of 2017 before the Court below for partition of the suit schedule property into four equal shares and for allotment of one such share to her. It is the case of the 4th defendant that the 1st defendant has got two surviving sisters by names 'Parimi Chandram' and 'Chitturi Ammaji' and when the suit is filed for partition of the ancestral property, non-joinder of two sisters is bad under law. As such, pending trial, the 4th defendant filed an application under Order VIII Rule 9 read with Section 151 of CPC, requesting the Court below to permit him to file additional pleading by way of additional written statement. The plaintiff filed a counter affidavit in the said application by contending that the 4th defendant, to overcome the legal barriers, has filed the subject petition under Order VIII Rule 9 of CPC and that there is no proper explanation as to why the 4th defendant has not taken such plea in the written statement. For better appreciation of the case, Order VIII Rule 9 of CPC is extracted hereunder:

"Order VIII Rule 9 of CPC:

9. Subsequent pleadings:— No pleading subsequent to the written statement of a defendant other than by way of defence to set off or counterclaim 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."

6. It is evident from Order VIII Rule 9 of CPC that no pleadings subsequent to the written statement of the defendant, other than by way of

defense to a set-off or counterclaim, shall be presented except with the leave of the Court and upon such terms as the Court may deem necessary. However, the Court may, at any time, require a written statement or an additional written statement from any of the parties and fix a time not exceeding 30 days for its submission. In **Noorul Hassan v. Nahakpam Indrajit Singh**¹, the Hon'ble Apex Court observed that the replication, though not a pleading as per Order VI Rule 1 of CPC, is permissible with the leave of the Court under Order VIII Rule 9 CPC, which gives a right to file a reply in defence to set-off or counterclaim set up in the written statement. The Hon'ble Apex Court further observed that, however, such leave is not to be granted mechanically. The Court before granting leave must consider the averments made in the plaint, the written statement and the replication. Upon consideration thereof, if the court feels that to ensure a fair and effective trial of the issues already raised, the party must get opportunity to explain/clarify the facts newly raised or pleaded in the written statement, it may grant leave upon such terms as it deems fit.

7. From the aforesaid judgments, it is settled that the provision under Order VIII Rule 9 CPC is not meant for amendment. The application under Order VIII Rule 9 CPC cannot be decided as an application under Order VI Rule 17 CPC. A subsequent pleading is not a substitute for amendment. Order VIII Rule 9 CPC allows for the subsequent developments related to the

¹ (2024) 9 SCC 353

disputes already on record between the parties. A new cause of action cannot be permitted by way of subsequent pleadings.

8. In the case on hand, the Court below, having observed that the suit being filed for partition of suit schedule properties and due to non-impleadment of the sisters of the 1st defendant, the suit becomes bad for non-joinder of necessary parties, allowed the petition filed by the 4th defendant by permitting him to file additional written statement. The power of Court to permit pleadings subsequent to the written statement of the defendant is envisaged by Order VIII Rule 9 of CPC and the said provision ordains that no pleading subsequent to the written statement of a defendant other than by way of a 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.

9. In the present case, the 4th respondent wanted to file additional written statement to add further pleadings to the written statement which squarely falls under Order VIII Rule 9 of CPC. In such a case, the discretion of the Court to allow subsequent pleadings under Order VIII Rule 9 of CPC is perhaps wider than the discretion given to it by Order VI Rule 17 of CPC. This additional plea taken by the 4th respondent is only an alternative plea put-forward by him and he is entitled to take alternative or inconsistent pleas unlike a plaintiff. Even otherwise, if the petitioner/plaintiff is so aggrieved by the contents of the additional written statement proposed to be filed by the 4th

defendant, he can elicit the truth or otherwise of the contents of the additional written statement to be filed by the 4th defendant during the course of trial.

10. As the subject suit filed by the plaintiff is for partition of suit schedule properties, this Court, in order to ensure a fair and effective trial of the issues already raised, feels that the Court below has rightly afforded an opportunity to the 4th defendant to explain/clarify the facts newly raised or pleaded in the written statement. As discussed earlier, the plaintiff is always at liberty to ascertain the truth or otherwise of the contents of the additional written statement sought to be filed by the 4th respondent during trial.

11. In view of the foregoing discussion, this Court do not find any ground to exercise its jurisdiction under Article 227 of the Constitution of India by interfering with the impugned order dated 15.02.2024 passed by the Court below in I.A.No.2096 of 2023 in O.S.No.160 of 2017.

12. Accordingly, this civil revision petition is dismissed. There shall be no order as to costs.

Consequently, miscellaneous applications, pending, if any, shall also stand closed.

JUSTICE V. SUJATHA

Date:13.11.2025

Gss