

PETITIONER:
G. NAGAMMA & ANR.

Vs.

RESPONDENT:
SIROMANAMMA & ANR.

DATE OF JUDGMENT 27/11/1995

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
HANSARIA B.L. (J)

CITATION:
1996 SCC (2) 25 1995 SCALE (7) 353

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

Leave granted.

The appellants laid the suit for specific performance of the agreement of reconveyance dated 30th August, 1967. Application under Order 16 Rule 17 of Code of Civil Procedure, 1908 was filed seeking amendment of the plaint by incorporating averments in para 3 thereof. Thus the appellants pleaded that the transactions of execution of sale deed and obtaining a document for reconveyance were single transactions. viz., mortgage by conditional sale. In paragraph 9, they wanted alternative relief to redeem the mortgage. At the end of the prayer, the plaintiff sought alternatively to grant a decree for redemption of mortgage. This application was rejected by the Trial Court. On revision, the High Court of Andhra Pradesh confirmed the same holding that in the original plaint the suit was for specific performance and the reconveyance was not incorporated in the sale deed and that, therefore, the amendment was not warranted. Amendment would change the nature of the suit as well as cause of action.

We called upon the appellant to produce original agreement of reconveyance. We have seen the original document which contains the recitals in support of the contention raised by the appellants. It is settled law that the plaintiff is entitled to plead even inconsistent pleas. In this case, they are seeking alternative reliefs. The application was for amendment of the plaint whereby neither cause of action could change nor the relief could be materially affected. We allow the same.

The appellants shall file amended plaint. It would be open to the respondents to raise all the defences by filing additional written statement. The Trial Court is directed to dispose of the suit within eight months from the date of the receipt of this order.

The appeal is accordingly allowed. No costs.

JUDIS