

G. NAGAMMA AND ANR.  
v.  
SIROMENAMMA AND ANR.

NOVEMBER 27, 1995

[K. RAMASWAMY AND B.L. HANSARIA, JJ.]

*Code of Civil Procedure, 1908 : Order 16—Rule 17.*

*Agreement for reconveyance—Suit for specific performance—Amendment of plaint seeking alternative reliefs—Held permissible.*

In a suit for specific performance of an agreement for reconveyance, the appellants filed an application seeking amendment of plaint. They pleaded that the transactions of execution of sale deed and obtaining a document for reconveyance were single transactions viz. mortgage by conditional sale. They also wanted alternative relief for redemption of mortgage. The amendment application was rejected by the Trial Court. The High Court also held that amendment was not permissible as it would change the nature of suit as well as the cause of action.

Allowing the plaintiffs' appeal, this Court

**HELD :** It is settled law that the plaintiff is entitled to plead even inconsistent pleas. In this case, plaintiffs 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. The same is allowed. The appellants shall file amended plaint and it would be open to the respondents to raise all the defences by filing additional written statement. [702-E-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 11619 of 1995.

From the Judgment and Order dated 14.2.95 of the Andhra Pradesh High Court in C.R.P. No. 673 of 1991.

A. Rama Subbiah and Amlan Ghosh for the Appellants.

D. Ramakrishna Reddy, D. Bharathi Reddy and S.K. Mehta for the

**A** Respondents.

The following Order of the Court was delivered :

Leave granted.

- B** 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.,
- C** 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
- D** 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.

- E** 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.
- F**

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.

- G** The appeal is accordingly allowed. No costs.

T.N.A.

Appeal allowed.