

THE HON'BLE SRI JUSTICE SANJAY KUMAR

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CIVIL REVISION PETITION No.1590 of 2015

ORDER:

The 2nd defendant in O.S.No.79 of 2011 on the file of the learned IV Additional District Judge, Tanuku, is in revision before this Court under Article 227 of the Constitution aggrieved by the order dated 18.02.2015 passed by the trial Court dismissing his application in I.A.No.139 of 2014 to frame two additional issues filed under order XIV Rule 5 CPC.

The suit, O.S.No.79 of 2011, was filed by the 1st respondent herein for a declaration that the sale dated 06.05.2011 relating to item 3 of the plaint A schedule was not binding upon her and to grant a decree for partition of the plaint A schedule properties, under items 1 to 3, into four equal shares and to put her in separate possession of 1/4th share thereof after ejecting the defendants therefrom. She also sought a decree for partition of the plaint B schedule properties and for future profits and costs. The 1st respondent/plaintiff is no other than the sister of the petitioner/2nd defendant herein. The 2nd respondent herein, being the 1st defendant in the suit, is their mother, while the 3rd respondent herein, being the 3rd defendant in the suit, is the 1st respondent/plaintiff's other brother. Respondent Nos.4 to 11 are alleged to be subsequent purchasers of the plaint schedule properties.

By way of the subject I.A., the petitioner/2nd defendant sought framing of two additional issues in relation to items 1 to 3 of the plaint A schedule. It was his case that item 2 of the plaint A schedule properties was his self-acquired property and it therefore would not be liable to be partitioned. As regards items 1 and 3 of the plaint A schedule properties, it was his case that the said items were purchased by the father in the name of the mother, the 2nd respondent/1st defendant, and that she had no financial means to

purchase the said property and therefore, that issue also had to be decided by the trial Court. These were the two additional issues sought to be framed.

The trial Court was however of the opinion that the points sought to be raised for consideration by way of these additional issues would fall within the ambit of issues 1 and 2 already framed in the suit. On this account, the trial Court was of the opinion that there was no necessity to frame any additional issues.

Though it would normally be advisable for the trial Court to succinctly determine the points for consideration arising in the suit by framing precise issues, it has become the practice to frame general issues so as to comprehensively deal with the matter by widening the ambit of the issue if found necessary in the course of the suit proceedings. That is perhaps the reason why the trial Court framed the issues in the present case in very general terms, whereby the trial Court was required to answer the question as to whether the plaintiff was entitled for a declaration in respect of item 3 of the plaint A schedule property and whether the plaintiff was entitled to seek a decree for partition of the plaint A and B schedule properties and for allotment of shares therein.

It is a settled position of law that irrespective of the niceties involved in the framing of issues, as long as the parties are aware and conscious of what is the point falling for consideration in the suit and accordingly address the same by way of oral and documentary evidence, the trial Court would be bound to deal with such issue notwithstanding the fact that no precise issue in that regard is framed.

In the present case, in the light of the I.A. filed by the petitioner/2nd defendant clarifying the further points that arise for consideration and as the parties and the trial Court have been made fully aware of the same, it is for the parties to address these issues during the trial and the Court would be bound to address the same thereafter. Making this position clear, this Court is of the opinion that no

interference is warranted in this civil revision petition.

The civil revision petition is accordingly dismissed subject to the above observation.

Pending Miscellaneous Petitions, if any, shall also stand dismissed. No order as to costs.

SANJAY KUMAR, J

Date:28.08.2015

GJ