

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

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CIVIL REVISION PETITION No.4749 of 2013

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ORDER:

The order under revision is the order passed by the learned Senior Civil Judge, Srikalahasti in I.A.No.442 of 2012 in A.S.No.2 of 2008 dated 06.07.2012. The petitioner herein is the appellant in A.S.No.2 of 2008. The respondent herein filed O.S.No.337 of 2000 against the petitioner herein. On the suit being decreed, the petitioner herein filed A.S.No.2 of 2008. He filed I.A.No.442 of 2012 in A.S.No.2 of 2008, under order XLI Rule 25 CPC, requesting the appellate Court to frame additional issues along with the already framed issues, contending that the trial Court had omitted to frame material and crucial issues shown in the list appended to the petition. The petitioner herein contended that, as these issues were pure questions of law, they could be raised even at the stage of appeal.

The Appellate Court noted that, from the recitals of the certified copy of the judgment in O.S.No.337 of 2000, it appeared that the respondents had filed O.S.No.337 of 2000 against the petitioner seeking the relief of permanent injunction contending that they were in possession and enjoyment of 'A' and 'B' schedule properties; the petitioner, who was a neighbour of the 'A' schedule property, was unauthorisedly using water from the 'B' schedule well; he was creating obstacles to the inhabitants of Ashramam, situated in 'A' schedule property, removing the 3 HP motor; and, hence, the suit was instituted.

The Appellate Court observed that, since the suit was filed only for the limited purpose of granting injunction against the petitioner, the

only question which had to be examined was as to who was in possession and enjoyment of 'A' and 'B' schedule properties as on the date of filing the suit; there was no need for it to examine the issues sought to be raised by the petitioner herein; the question of settlement of additional issues had already been raised by the petitioner, in the main suit before the trial Court, by filing an interlocutory application therein; the same was dismissed; the petitioner did not prefer any appeal or revision thereagainst; and suppressing the said fact, he had filed the petition in I.A.No.442 of 2012 before the Appellate Court. On both these grounds, the Appellate Court held against the petitioner.

The additional issues, proposed to be framed, are not pure questions of law and are, at best, mixed questions of fact and law. The appellant, having filed an I.A. before the trial Court for raising additional issues and having chosen not to question dismissal of the I.A., was not entitled to contend before the Appellate Court that these issues should be examined at the stage of appeal. In any view of the matter, the order of the Appellate Court does not suffer from any patent illegality necessitating interference in proceedings under Article 227 of the Constitution of India.

The Civil Revision Petition fails and is, accordingly, dismissed. Miscellaneous petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

RAMESH RANGANATHAN, J

24th April, 2015.

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