

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No.3448 of 2015

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, by the unsuccessful defendants/respondents is directed against the order dated 01.07.2015 of learned II Additional Senior Civil Judge, Nandyal of Kurnool District passed in I.A.No.382 of 2014 in OS no.312 of 2011 filed under Order XIV Rule 5 of Code of Civil Procedure, 1908 (for short 'the Code') requesting the Court below to frame the following issues and substitute the same with the original issues by recasting the issues :

“(1) Whether the gift deed dt.16.08.2010 was obtained from the defendants by playing pressure, threat, coercion etc., as pleaded by the defendants (2) Whether the defendants have a right to cancel the gift deed dated 16.8.2010 unilaterally without filing a suit for its cancellation and (3) Whether the plaintiff is not entitled for injunction as prayed for.”

[Reproduced verbatim].

2. I have heard the submissions of the learned counsel for the revision petitioners/defendants 1 and 2 ('the defendants', for brevity) and the learned counsel for the 1st respondent/plaintiff ('the plaintiff', for brevity). I have perused the material record.

3. The facts necessary and relevant for consideration, in brief, are as follows: "The sole plaintiff brought the suit against the revision petitioners/the defendants 1 and 2 and the 3rd defendant for declaration of title based on a registered gift deed dated 16.08.2010 in respect of the plaint schedule immovable properties. The defendants are resisting the suit. Having regard to the pleadings of the parties, the trial Court had framed the following issues:

- “1. Whether the plaintiff is entitled for declaration of his title over the schedule property and for consequential permanent injunction as prayed for?**
- 2. Whether the plaintiff is entitled for recovery of arrears of rent amount from the 3rd defendant in respect of 2nd item of plaint schedule property?**
- 3. To what relief?**

When the suit is coming up for trial, the plaintiff had filed the aforementioned interlocutory application requesting the trial Court to recast the issues and frame the issues as suggested by him and substitute the same in the place of the issues originally framed by the Court. The said application was resisted by the

defendants. On merits, the trial Court had allowed the application in part and, while retaining the original issues as framed on 28.03.2012, had also framed the following additional issues:

- (1) **Whether the gift deed dated 16.08.2010 was obtained from the defendants by playing pressure, threat, coercion etc., as pleaded by the defendants?**
- (2) **Whether the defendants have a right to cancel the gift deed dated 16.08.2010 unilaterally without filing a suit for its cancellation?**

[Reproduced verbatim]

4. Aggrieved of the same, the defendants 1 and 2 had filed the present revision petition.

5. The learned counsel for the defendants 1 and 2 would submit as follows: “The Court below ought to have seen that when the matter is at the stage of trial, the plaintiff had filed the belated application for recasting of the issues. By allowing the said belated application of the plaintiff, the trial Court had unnecessarily framed the additional issues, without taking into consideration the nature and scope of the litigation. The Court below did not taking into consideration, the vital fact that the additional issues that were framed unnecessarily would enlarge the scope of the litigation between the parties and that the issue no.1 originally framed by the Court below to the effect that ‘whether the plaintiff is entitled for declaration of his title over the schedule property and for consequential permanent injunction as prayed for’, is a comprehensive issue and that on that issue the legal burden is on the plaintiff, more particularly, when the suit is for declaration of title and that therefore there is no need to frame any additional issues as to ‘whether the gift deed dated 16.08.2010 was obtained from the defendants by playing pressure, threat, coercion etc., as pleaded by the defendants?’ and ‘Whether the defendants have a right to cancel the gift deed dated 16.08.2010 unilaterally without filing a suit for its cancellation?’ By recasting the issues and framing the aforesaid additional issues the Court below has shifted the burden of proof unnecessarily on to the defendants. The order resulting in the framing of the additional issues has caused prejudice to the defendants 1 and 2. Therefore, the order impugned is unsustainable in law.”

5.1 In support of his contention he had placed reliance on a decision in

Dr.S.V.S.Ravi Krishna Vs K.Sita Ramaiah and another^[1] wherein this Court held that when the issues already framed are comprehensive and all other issues which are ancillary issues, would be considered under the said comprehensive issue, there is no need to frame any ancillary issues and that any order directing to frame ancillary issues which are covered by comprehensive issues would result in violation of justice.

6. On the other hand, the learned counsel for the plaintiff while drawing the attention of the Court to the defence taken in the written statement of the defendants and while supporting the order of the Court below would contend as follows: “In view of the specific stand taken by the defendants 1 and 2 that they have executed the gift deed in question under pressure, threat and coercion on the death of their elder son Mahaboob Basha, it is necessary to frame, consider and determine, incidentally, the additional issues also. The Court below was correct in framing the additional issues having regard to the issues that had arisen on the material facts and propositions asserted and denied by the parties. The impugned order needs no interference.’

6.1 He had placed reliance on a decision of the Division Bench of this Court in ***Appollo Health and Lifestyle Limited and another Vs Anupam Saraogi***^[2], in support of the following contentions: “As contemplated by Order XIV Rules 1, 2 and 3 of the Code, the issues framed must cover all important questions involved in the case. The issues should not be general and vague. While framing the issues, the allegations made in the pleadings of the parties must be borne in mind. The trial Court while deciding the suit should realize that the suit has to be decided strictly in adherence to the provisions contained in Order XIV of the Code.’ In this cited decision the facts disclose that despite the order of this Court earlier made in a CRP, the trial Court had refused to frame the issues, which are necessary to be framed, and therefore, this Court has found fault with the approach of the Court below. In a decision in ***Sannidhi Satyanarayana Murthy (died) by LRs Vs Bangaru Rajeshwari***^[3] that was also relied upon, this Court has pointed out that each material proposition of fact or law affirmed by one party and denied by the other shall form the subject of a distinct issue and that the Court shall frame the issues on which the right decision of the case

appears to depend after ascertaining upon what material propositions of fact or of law the parties are at variance. This Court has also pointed out that Rule 5 of Order XIV further empowers the Court to frame additional issues at any time before passing a decree for determining the matters in controversy between the parties.

7. I have carefully gone through the decisions cited. While continuing to deal with the legal propositions it is necessary to refer to the following relevant Rule of the Civil Rules of Practice:

Rule 106. (61) Framing of Issues :

- (1) Every material proposition of fact and every proposition of law, which is affirmed by the one side and denied by the other, shall be made the subject of a separate issue.
- (2) Every issue of fact shall be so framed as to indicate on whom the burden of proof lies.
- (3) Every issue of law shall be so framed as to indicate, either by a statement of admitted or alleged facts, or by reference to the pleadings or some documents mentioned therein, the precise question of law to be decided.
- (4) No proposition of fact which is not itself a material proposition but is relevant only as ending to prove a material proposition, shall be, made subject of an issue.
- (5) No question regarding admissibility of evidence shall be made subject of an issue.

8. It is trite to mention that all the issues shall generally be framed in the affirmative unless there is a Rule reversing the Onus of proof. It is also apt to mention that in a suit for declaration of title, the legal burden is always on the plaintiff and that the plaintiff succeeds on his or her strength but not on the weaknesses of the defence and that the legal burden never shifts. It is also appropriate to mention that there is a subtle distinction between the two legal phrases the 'Onus of Proof' and the 'Burden of Proof'. The 'Burden of Proof' in the broader sense means the legal burden to establish the whole case. The legal burden never shifts. In the well considered view of this Court, Onus of Proof is the burden to introduce evidence or evidentiary burden; and, during the course of trial, it shifts from side to side. To put it more precisely, the onus to introduce evidence only shifts and it is a continuous process during the course of trial and such a shifting of onus of proof is a continuous process in the evaluation of evidence. [Vide A. Raghavamma and another v/s A. Chenchamma (AIR 1964 SC 136)] However after both parties adduce evidence,

the Court would be called upon to decide the *lis* having regard to the evidence brought on record and by evaluating the entire evidence. In the present suit which is filed for declaration of title, the legal burden is on the plaintiff and therefore, it is for the plaintiff to adduce necessary evidence on the material facts and the propositions, which constituted the cause of action, for the plaintiff to succeed in the suit. The plaintiff succeeds on the plaintiff's own strength but not on the weakness of the defence. Therefore, on the first issue framed on 28.03.2012 as to 'whether the plaintiff is entitled for declaration of his title over the schedule property and for consequential permanent injunction as prayed for', which is a comprehensive issue, the legal burden to establish the plaintiff's case is on the plaintiff and if only the plaintiff adduces the required standard of evidence on the said issue, the plaintiff would be entitled to the relief of declaration as prayed for and all other consequential reliefs. Undoubtedly, only on the plaintiff discharging the initial 'Onus of proof' on the said issue, the onus of proof or the burden to introduce evidence shifts on to the defendants and in such circumstances, the defendants would be required to prove their right to resist the suit for declaration of title and perpetual injunction. In a suit for declaration of title, based on a gift deed the trial Court had rightly framed the issues 1 and 2 at the inception i.e., on 28.03.2012. Though the plaintiff wanted deletion of the said issues and substitution of the said issues with the issues as suggested in his petition, the trial Court did not agree with the contention of the plaintiff; and the trial Court had only allowed the petition in part; and, while retaining the issues originally framed the Court below had framed additional issues, which are already extracted supra. By framing the additional issues, the trial Court had specifically drawn the attention of the parties to the aspect that the defendants in their defence had urged certain material propositions of facts to the effect that the gift deed in question was obtained by applying pressure, threat and coercion and also the aspect as to whether the cancellation of the gift deed unilaterally is valid in law.

9. The materials from which the issues are to be framed are –

Allegations made on oath by the parties or any person present on their behalf or by pleaders (Order XIV Rule 3)
Allegations in the pleadings
Answers to interrogatories (Order XI Rule 9)
Contents of documents produced by both the parties (Order XIV Rule 3)

Further, the Court may also examine witnesses and documents before framing

issues, if issues cannot be framed correctly without such examination (Order XIV Rule4).

10. In the decision in **Fiza Developers and Inter-Trade P. Ltd. Vs. AMCI (I) Pvt. Ltd. and Anr.**^[4], the Supreme Court of India while dealing with aspect of 'the object of framing the issues' and 'the need for framing the issues' has held as under:

Need for framing issues

7. The object of issues is to focus upon the questions on which evidence has to be led and to indicate the party on whom the burden of proof lies. Rules 1 of Order 14 of the Code dealing with framing of issues is extracted below:

1. Framing of issues - (1) Issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other.

(2) Material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence.

(3) Each material proposition affirmed by one party and denied by the other shall form the subject of a distinct issue.

(4) Issues are of two kinds - (a) issues of fact, and (b) issues of law.

(5) At the first hearing of the suit, the Court shall, after reading the plaint and the written statements, if any, and after examination under Rule 2 of Order X and after hearing the parties or their pleaders, ascertain upon what material propositions of fact or of law the parties are at variance, and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to depend.

(6) Nothing in this rule requires the Court to frame and record issues where the defendant at the first hearing of the suit makes no defence.

In *Makhan Lal Bangal v. Manas Bhunia*: 2001 (2) SCC 652, this Court held that the issues are important as they determine the scope of a trial by laying down the path for the trial to proceed, free from diversions and departures. This Court observed:

The evidence shall be confined to issues and the pleadings. No evidence on controversies not covered by issues and the pleadings, shall normally be admitted, for each party leads evidence in support of issues the burden of proving which lies on him. The object of an issue is to tie down the evidence and arguments and decision to a particular question so that there may be no doubt on what the dispute is. The judgment, then proceeding issue-wise would be able to tell precisely how the dispute was decided.

There is no doubt that framing of issues is necessary in every contested regular civil suit. Equally clear is the position that in proceedings which are intended to be summary in nature, issues are not framed. Proceedings for setting aside ex parte decrees, proceedings for restitution, proceedings for execution and proceedings for permission to sue as an indigent person, are illustrative of summary proceedings which are governed by the Code, where issues are not framed. In a summary proceeding, the respondent is given an opportunity to file his objections or written statement. Thereafter, the court will permit the parties to file affidavits in proof of their respective stands, and if necessary permit cross examination by the other side, before hearing arguments. Framing of issues in such proceedings is not necessary. We hasten to add that when it is said issues are not necessary, it does not mean that evidence is not necessary.

11. The legal position, which is succinctly stated, is by itself enough to state

that the trial Court need not be faulted for framing the additional issues even though the first issue originally framed is a comprehensive issue. The additional issues also determine the scope of the trial by laying down the path for the trial to proceed, free from diversions and departures. Therefore, the additional issues are evidently framed by the Court below only for the above said obvious purpose. In the well considered view of this Court, as the issues originally framed are retained without deletion while framing the additional issues, the course adopted by the Court below is not going to cause any prejudice to the case of the defendants. It is appropriate to mention that it is for the Court below to decide at the appropriate stage as to how to deal with the issues and additional issues framed. It is for it to decide as to whether or not the issue no.1 and the additional issues nos.1 and 2 together, shall be taken up together for consideration and determination, as the answer to the said question depends upon the convenience and also the facet as to whether a common discussion of the relevant facts and relevant evidence adduced in respect of the said issues would be adequate to answer the said issues. Further, in the decision in **In R.V.E. Venkatachala Gounder vs. Arulmigu Viswesaraswami and V.P. Temple and Anr.**^[5] the Supreme Court having referred to an earlier decision cited held as follows:

In a suit for recovery of possession based on title it is for the plaintiff to prove his title and satisfy the Court that he, in law, is entitled to dispossess the defendant from his possession over the suit property and for the possession to be restored with him. However, as held in A. Raghavamma and Anr. v. Chenchamma and Anr.,: [1964]2SCR933 , there is an essential distinction between burden of proof and onus of proof: burden of proof lies upon a person who has to prove the fact and which, never shifts. Onus of proof shifts. Such a shifting of onus is a continuous process in the evaluation of evidence. In our opinion, in a suit for possession based on title once the plaintiff has been able to create a high degree of probability so as to shift the onus on the defendant it is for the defendant to discharge his onus and in the absence thereof the burden of proof lying on the plaintiff shall be held to have been discharged so as to amount to proof of the plaintiffs title.

Further, this Court finds that by the additional issues that are framed by the Court below, no prejudice is caused to the defendants as the burden of proof in the broader sense means the legal burden to establish the whole case and the said legal burden always remains on the plaintiff in a suit for declaration of title.

12. Applying the analogy of the ratio in the decision it is sought to be contended that in the instant suit once the plaintiff would be able to create a high degree of probability so as to shift the onus on to the defendants it is for the defendants to discharge their onus and that in the absence thereof the burden of

proof lying on the plaintiff shall be held to have been discharged so as to amount to proof of the plaintiffs title and that therefore, the framing of additional issues is appropriate. However, there is no need to express any opinion at this stage of the matter on the aspects of 'discharge of onus of proof' or 'discharge of initial onus of proof' and 'the shifting of onus', as the matter is still at the stage of trial and as such questions in regard to evaluation of evidence fall for consideration at the time of final adjudication of the *lis* on merits by the Court below.

13. In view of the legal position obtaining the and for all the aforementioned reasons, this Court finds that the order of the Court below resulting in the framing of additional issues while retaining the issues originally framed by the Court below need not be faulted, in the facts and circumstances of the case,.

14. Viewed thus, this Court finds that there is no error much less jurisdictional error in the orders of the Court below calling for interference by this Court.

15. In the result, the Civil Revision Petition is dismissed.

There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this Civil Revision Petition shall stand closed.

M. Seetharama Murti, J

13th April, 2016.
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[\[1\]](#) 2003 (3) ALT 569

[\[2\]](#) (2015) 3 ALD 681

[\[3\]](#) 2011 (3) ALD 714

[\[4\]](#) [2010(6)ALT2(SC) = (2009)17SCC796

[\[5\]](#) [AIR 2003 SC 4548]