

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH**

CASE No. C.R.P.No.5178 of 2003

Between:

Kunj Bihari and others

... Petitioners

AND

Om Prakash and others

... Respondents

DATE OF JUDGMENT PRONOUNCED: 12th February, 2016

-
-

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

- | | | |
|----|--|--------|
| 1. | Whether reporters of local newspapers
may be allowed to see the judgment? | Yes/No |
| 2. | Whether the copies of judgment may be
marked to Law Reporters/Journals? | Yes/No |
| 3. | Whether Their Lordship wish to see the
fair copy of the judgment? | Yes/No |

C.V.NAGARJUNA REDDY, J

*** THE HON'BLE MR JUSTICE C.V.NAGARJUNA REDDY**

-
+ Civil Revision Petition No.5178 of 2003

-
+ DT.12.02.2016

Kunj Bihari and others

...Petitioners

Vs.

\$ Om Prakash and others

... Respondents

^ Counsel for the Petitioners: Sri Pratap Narayan Sanghi

! Counsel for respondent No.1: Sri Meherchand Nori

< Gist:

> Head note:

? Cases referred:

2012 (2) ALD 205

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

Civil Revision Petition No.5178 of 2003

Dated 12th February, 2016

Between:

Kunj Bihari and others

...Petitioners

And

Om Prakash Gupta and others

...Respondents

Counsel for the petitioners: Sri Pratap Narayan Sanghi

Counsel for respondent No.1: Sri Meherchand Nori

The Court made the following:

ORDER:

This civil revision petition is craving for disposal for the last 13 years on a simple issue as to whether the additional issues proposed by the petitioners as defendants in the suit must be framed or not.

The undisputed facts leading to filing of the civil revision petition are that respondent No.1 has filed O.S.No.1721 of 1996 in the Court of the learned Additional Judge, City Small Causes Court-cum-VI Senior Civil Judge, City Civil Court at Hyderabad for specific performance of agreement of sale against the petitioners and respondent Nos.2 to 14. It is the case of respondent No.1 that respondent Nos.2 and 3 are the original owners of the suit schedule property of which he is a tenant under oral tenancy. It is his further case that in pursuance of the oral agreement of sale, respondent Nos.2 and 3 agreed to sell the suit schedule property to him. That the petitioners and respondent Nos.4 to 10 have purchased separate portions of the suit schedule property from respondent Nos.2 and 3. Respondent No.3 having died, respondent Nos.11 to 14 were brought on record as his LR's. Neither respondent No.2 nor the LR's of respondent No.3 have contested the suit. The petitioners and other respondents, who are purchasers, are alone contesting the suit.

The petitioners have filed I.A.No.276 of 2003 under Rule XIV Order 5 CPC for framing the following additional issues:

“1. Whether the plaintiff was ever originally tenant in premises No.22-5-67.

2. Whether tenancy was attained or that after partition of the joint family property in favour of Defendant No.1 with respect to premises No.22-5-67.

3. Whether any tenancy with respect to the premises No.22-5-67 was attained in favour of D-1 or D-2.

4. Whether the plaintiff have ever deposited a sum of Rs.15,000/- with the Defendant No.1 or that Rs.15,000/- was ever apportioned with D-1 and Smt.Saraswati Bai or whether a sum of Rs.5,000/- was ever transferred as a deposit with Defendant No.2 by the defendant No.1.

5. Whether the plaintiff ever paid a sum of Rs.20,000/- with the defendant No.2.

6. Whether the defendant No.1 ever agreed with the plaintiff to obtain income tax clearance certificate.”

This application is dismissed by the Court below on the reasoning that in a suit for specific performance of contract, the matter pertaining to tenancy need not be tried as a separate issue and that proposed issues Nos.4 to 6 are covered by the issue of specific performance. The plea on which the petitioners sought to raise the additional issues was that as respondent No.1 has pleaded that he has deposited a sum of Rs.15,000/- towards rent and that in pursuance of the oral agreement of sale, he has requested respondent Nos.2 and 3 to adjust the said amount towards sale consideration.

The fact that the claim of respondent No.1 with regard to the status as tenant of respondent Nos.2 and 3 is in serious dispute. Under Order XIV Rule 1 CPC issues arise when a material proposition of fact or law is affirmed by one party and denied by the other.

In the present case, the status of respondent No.1 as a tenant and his claim that he has paid Rs.15,000/- towards rent and that he has subsequently requested respondent Nos.2 and 3 to adjust the same allegedly towards oral sale consideration are material propositions which are denied by the petitioners and thereby it is necessary to frame the issues in that regard. The lower Court, in my opinion, has made a perfunctory approach in rejecting the petitioners' application. Indeed, by allowing the petitioners to raise the additional issues, no prejudice will be caused to respondent No.1/plaintiff. On the contrary, by not permitting the additional issues to be framed, there is a likelihood of the suit not being disposed of comprehensively.

In **Kotha Sailaja v. Thandu Yadagiri and others**^[1], I had an occasion to deal with the subject relating to framing of issues and held as under:

“When a suit is filed, the Court should make every endeavour to decide all the questions arising therein in a comprehensive manner so that the parties to the litigation will not have the necessity of being driven to further litigation.”

Having regard to the facts discussed above and the settled legal

position, this Court is of the opinion that the lower Court has committed a serious jurisdictional error in not framing additional issues as proposed by the petitioners. Accordingly, I.A.No.276 of 2003 is allowed. Since the suit is of the year 1996, the lower Court is directed to dispose of the same, after framing the additional issues and allowing the parties to produce additional evidence, if any, by recalling the witnesses, within four months from the date of receipt of a copy of this order.

Subject to the above directions, the civil revision petition stands allowed.

As a sequel to disposal of the civil revision petition, CRP.MP.Nos.23376/03, 13774/04 & 4798/05 shall stand disposed of as infructuous.

C.V.NAGARJUNA REDDY, J

12th February, 2016
VGB

[\[1\]](#) 2012 (2) ALD 205