

HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No.2647 of 2016

ORDER:

This civil revision petition under Article 227 of the Constitution of India by the petitioners/plaintiffs is directed against the orders dated 22nd March, 2016 of the learned VII Additional District Judge, Ranga Reddy, passed in I.A.No.2087 of 2015 in O.S.No.1650 of 2013 filed under Order XIV Rules 1 to 5 read with Section 151 of the Code of Civil Procedure, 1908, requesting to frame an additional issue as stated in the petition list and delete Issue No.3 already framed by the Court.

I have heard the submissions of Sri Ali Farooq, learned counsel for petitioners and Sri S.Sharat Kumar, learned Senior Counsel appearing for the respondents.

I have perused the material record.

As per the submissions made before this Court and the facts borne out by the material record, there are two suits before the trial Court; O.S.No.1650 of 2013 is a suit for partition and the other suit O.S.No.36 of 2015 (New O.S.No.322 of 2016) is for eviction of the defendant. Both suits are consolidated for conducting joint trial and common evidence is being recorded in one of the two suits. In the earlier round of litigation, this Court in C.R.P.No.4484 of 2015 by orders dated 29.01.2016 directed the trial Court to dispose of the suit O.S.No.1650 of 2013 within three months. In both the suits, the trial Court framed the issues separately. The plaintiffs in the instant suit/petitioners herein filed the subject application as already noted, for deleting issue No.3, which reads as under: **“Whether the Suit A**

Schedule property is the absolute property of Defendant No.1 and he acquired the same under Register Gift deed dated 01-01-2009” and for framing the following issue: “Whether the Defendant No.1, has orally gifted the suit schedule A & B properties in favour of the mother of the Plaintiffs and Defendant No.2 and 3 on 10-09-2010, and the same is binding on the Defendant No.1”.

By the orders impugned in this revision, the Court below, having noted that no counter is filed and no representation is made, allowed the said petition by a one sentence cryptic order. Though the application of the plaintiffs was allowed, they are before this Court by way of this revision for the reason that the Court below did not frame the issue as sought for in their petition despite allowing their petition, but framed an issue, on 30th March, 2016, as under:

“Whether defendant No.4 is a bonafide purchaser of Suit A-Schedule property and he is in exclusive possession of the same ?”.

At the hearing, the learned counsel for both the parties would fairly submit that the revision petition may be disposed of directing the Court below to frame an additional issue and delete issue no.3 already framed as per its orders dated 22nd March, 2016 in I.A.No.2087 of 2015. It is also stated by the learned Counsel appearing for the defendants/respondents herein that even though Issue No.3 is to be now deleted as per the earlier orders of the trial Court, the said issue is also a necessary issue to be settled and determined in the suit, and that therefore, liberty may be given to the defendants, to file an application to frame the said issue or any other relevant

issue that is necessary to be determined for effective adjudication of the *lis*.

Be that as it may.

It is not in dispute that the trial Court is having power under the Code of Civil Procedure, 1908, to frame any pertinent issue at any stage of the suit, if such issue arises and falls for consideration and determination along with other issues already settled for determination in the suit. However, it is needless to state that if a new issue comes to be framed by the trial Court after conclusion of the trial, the trial Court would be required to give opportunity to both the parties to adduce further necessary oral and documentary evidence concerning the said issue.

On the above analysis and having regard to the aforesaid submissions, this Court finds that this revision petition can be disposed of, as desired by both parties, directing the Court below to follow its earlier orders dated 22.03.2016 in I.A.No.2087 of 2015 and delete issue no.3 already framed and frame an additional issue as per its earlier orders, which are stated supra, and proceed with the further trial proceedings in the suits in accordance with the procedure established by law keeping in view the facts and circumstances of the case and also the legal position obtaining regarding framing and determination of issues. It is made clear that the trial Court shall not hesitate to frame/settle any further pertinent and necessary issues, if such issues arise for determination in any one suit or both the suits. In view of the earlier orders of this Court directing one of the two suits to be disposed of expeditiously, this Court deems it appropriate to direct the Court below to dispose of both the suits pending on its file as expeditiously as possible, and in any event, within three months from the date of receipt of a

copy of this order. The revision petition is accordingly disposed of. No costs.

Pending miscellaneous applications, if any, shall stand closed.

M.SEETHARAMA MURTI, J

21st November 2016

ajr

