

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.3686 of 2016

ORDER:

This revision petition is filed under Article 227 of the Constitution of India, challenging the order dated 06.06.2016 in I.A.No.161 of 2016 in O.S.No.289 of 2014 passed by the XIX Additional Senior Civil Judge, City Civil Court, Secunderabad, whereby the Court below declined to frame additional issues which are ten in number.

2. The respondent herein filed a suit for partition of the suit schedule property and allotment of his due share alleging that it was purchased jointly. The revision petitioners denied purchase of property jointly while contending that the property was purchased by the defendants 1 and 2 nominally in the name of plaintiff. Later the claim was settled on payment of Rs.4 lakhs towards full and final settlement and also raised a plea that the 2nd defendant constructed ground and first floor in the place of zinc sheet mulgi with his money and carrying on partnership business in the said property. Therefore, the building exclusively belongs to the defendants and that the suit is barred by law.

3. Though the defendants raised several contentions regarding nature of purchase nominally, settlement of claim and bar of claim by law etc., the plaintiff did not file any rejoinder under Order VIII Rule 9 of Code of Civil Procedure (for short 'the CPC') i.e; subsequent pleading denying the pleas raised by the defendants.

4. The Court has to frame issues based on the plea raised in the plaint and pleas raised in the written statement, if one party affirms the proposition of law or fact and denied by the other whether the issue may be a question of fact or law under Order XIV Rule 1 of CPC.

5. In the instant case the plaintiff asserted that the property was jointly purchased by the plaintiff and defendants while the defendants denying the said purchase set up a different case that the property was purchased by defendants 1 and 2 nominally in the name of plaintiff. Besides raising several other contentions for which no rejoinder was filed denying those allegations and in such case, no issue would arise in view of Order XIV Rule 1 of CPC. Order XIV Rule 3 of CPC, specifies, basis for framing issues. According to it, the Court may frame the issues from all or any of the following materials :-

- (a) allegations made on oath by the parties, or by any persons present on their behalf, or made by the pleaders of such parties ;
- (b) allegations made in the pleadings or in answers to interrogatories delivered in the suit and;
- (c) the contents of documents produced by either party.

6. In the present case the plaintiff-respondent herein did file no rejoinder to the additional pleas raised in the written statement. Therefore, the question of framing any additional issues would not arise, strictly adhering to Order XIV Rule 1 r/w. Order XIV Rule 3 of CPC. So far as bar of claim under law, if it is meant that the claim of the plaintiff is barred by limitation, the Court can take notice of such fact by exercising power under Section 3 of the Limitation Act and decide the question of limitation though no such plea of limitation was set up by the defendants. Therefore, the limitation can be decided at any point of time as it is a mixed question of fact and law, even in the absence of any plea, because it is the duty of the Court to decide the same.

7. The trial Court after considering entire material though not referred Order XIV of CPC passed an order rightly declining to frame issue. Hence, I find no legal infirmity warranting interference of this Court while exercising power under Section 227 of the Constitution of India. Consequently, the Revision is liable to be dismissed.

8. In the result, the Civil Revision Petition is dismissed. However, the observations made herein will have no bearing on the final decision of the trial Court and the trial Court is directed to decide the lis before it uninfluenced by the observations made herein. No costs.

Miscellaneous petitions, if any, pending in this civil revision petition shall stand closed.

10th August, 2016.
Rds

M. SATYANARAYANA MURTHY, J