

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 4464 of 2016

ORDER:

1) Assailing the order dated 01.07.2016 passed in I.A.No.62 of 2015 in O.S.No.49 of 2010 on the file of the VII Additional District Judge, Madanapalle, the present Civil Revision Petition is filed under Article 227 of the constitution of India, wherein and whereunder an application filed under Order XIV Rules 3 and 5 read with Section 151 C.P.C. to settle additional issues was dismissed.

2) For the sake of convenience, the parties hereinafter will be referred to as they were arrayed in I.A.No.60 of 2015.

3) The 1st respondent herein filed O.S.No.49 of 2010 directing the defendants to divide the plaint schedule property into two equal shares by metes and bounds taking good and bad into consideration and to allot one such share to the petitioner within the time specified by the Court, failing which the same to be done through process of law. The plaintiff got himself examined as PW1 and the award dated 15.11.2002 came to be marked as Ex.A2. Pending the suit, the petitioner filed I.A.No.62 of 2015 to frame additional issues. The plaintiff filed counter contending that defendant Nos.1 and 2 have been colluding with each other and in order to drag on the matter, are filing frivolous applications, thereby preventing the plaintiff from enjoying his rightful share over the property. It is further stated in the

counter that there is no need to frame additional issues as the same are not relevant to decide the case.

4) After considering the rival submissions made, the trial Court dismissed the petition with costs. Challenging the same, the present revision is filed.

5) Learned counsel for the petitioner submits that the trial Court framed only two issues basing on the plaint and the said issues do not cover the defence taken by the petitioners.

6) Learned counsel for the respondent/plaintiff submits that issues were framed on 17.12.2012 and the suit is posted for cross examination of PW1. He further submits that framing of additional issues at this stage would not arise. The petitioner did not choose to file draft issues and did not chose to raise any objection with regard to framing of issues before commencement of trial. He also submits that only to drag on the suit proceedings, the petitioner filed frivolous applications.

7) Order XIV of code of Civil Procedure, 1908 which deals with settlement of issues and Rule reads as under:

"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.
- (b) issues of law.

(5) At the first hearing of the suit the court shall, after reading the plaint and the written statement, 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 makes no defence."

8) As seen from the material on record, the issues already framed before the trial Court are as under:

1) Whether the Plaintiff is entitled for partition and separate possession of his half share in the plaint schedule property?

2) To what relief?

9) The proposed additional issues are as under:

- a) Whether the proceedings in O.S.No1.58 of 1992 on the file of the Senior Civil Judge, Madanapalle are true, valid, legal, binding and enforceable one?
- b) Whether the Lok Adalath decree dated 15.11.2003 is true, valid, legal, binding and enforceable one? If so, was the

duly acted upon and given effect to by the respective parties?

c) Whether the suit is bad for non-joinder of necessary and proper parties?

d) Whether the plaintiff's suit for mere partition is maintainable without praying for declaration and in the presence of the award dated 21.05.1992 passed by the elders?

e) Whether the fixed court fee paid under Section 34 (2) of A.P.C.F. Act is correct?

f) To what relief?

10) Issue No.1 framed by the trial Court is sufficient and the proposed additional issue Nos.1, 2 and 4 are covered as the suit is based on the award dated 15.11.2002 in O.S.No.158 of 1992. The Court can examine the validity of the said award while passing judgment.

11) Insofar as the proposed additional Issue No.3 is concerned, as per the award Item No.1 in O.S.No.158 of 1992 was allotted to the plaintiff and defendant No.1. At present defendant No.2 is now enjoying the said property. Except the above persons there are no other necessary or proper parties in the suit.

13) Insofar as proposed additional issue No.5 is concerned, the Court can reject the plaint if sufficient court fee is not paid by the plaintiff.

14) Issue identical to the case on hand came up for consideration before the Apex Court in *Modi Spinning and Weaving Mills Co. v. Latha Ram and Company*¹, wherein the Apex Court held as under:

"The power to frame additional issues is a discretionary power of the trial court. Additional issues may be framed if the court thinks necessary for determining the matter in controversy. By an order refusing to frame additional issues or allowing an application for framing of additional issues no right or obligation of the parties in controversy is adjudicated upon by the court. It is a matter only of procedure. The Court, after examining the pleadings and other material on record as required under Rule 3, may frame the issues. Since no right or obligation of a party is determined by an order refusing to frame additional issues such an order cannot be held to be deciding a case between the parties and would not come within the ambit of the expression "case which has been decided". Similar would be the position in regard to an order by which additional issues are framed or amended."

15) Viewed from any angle and having regard to the judgment of the Supreme Court referred to above, this Court is of the view that the issues already settled are sufficient for the purpose of deciding the questions in controversy between the parties in the suit. Hence, the revision sans merit and the same is liable to be dismissed.

¹ AIR 1978 All 260

16) Accordingly, 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.

JUSTICE C. PRAVEEN KUMAR

08.12.2016

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