

THE HON'BLE SMT. JUSTICE T.RAJANI

CIVIL REVISION PETITIN No. 4064 OF 2017

ORDER:

This revision is preferred against order dated 20-07-2017 in I.A.No. 638 of 2017 in O.S.No. 46 of 2009 on the file of the Court of XII Additional Chief Judge, City Civil Court, Secunderabad (for short, 'the Court below').

2. The grounds on which this revision is preferred are that the Court below framed routine issues without going through the contents of the written statement and erroneously refused to frame the additional issues which are crucial.

3. Heard both counsel.

4. A perusal of the impugned order shows that by considering that all the additional issues, which are sought to be framed, were already covered by the issues which were framed by it, the Court below refused to frame the additional issues. The issues that were framed by the Court below are as under:

- "1. Whether the plaintiffs are the exclusive owner of the suit property?
2. Whether the suit schedule property is a joint family property or not?
3. Whether the defendants are in unauthorized possession of the suit schedule property?
4. Whether the plaintiffs are entitled for relief of recovery of possession after evicting the defendants from the suit schedule property?
5. Whether the plaintiffs are entitled for damages from August, 1998 to February 2009 and future mesne profits and costs?
6. For any other relief?"

The additional issues that are sought to be framed are as follows:

- "1. Whether the registered sale deed dated 02-06-1969 executed by Smt. Yellamma in favour of Makkala Gandaiah is an out and out genuine sale deed or, whether the same constitutes a transaction of a loan

secured by an anomalous mortgage of the suit schedule property, camouflaged as a sale transaction?

2. *Whether the registered sale deed dated 26-04-1973 executed by Makkala Gandiah in favour of Smt. Rakonda Ramalingamma is an out and out genuine sale deed or, whether the same is factually the assignment of a mortgagor's unpaid debt by the mortgagee in favour of a subsequent mortgagee (Smt. Rakonda Ramalingamma)?*
3. *Whether Smt. Yellamma and her children including the Late Shankar and the Late Vishwanatham (1st Defendant) retained possession and continued to retain possession of the entire suit schedule premises notwithstanding execution of the registered sale deeds dated 02-06-1969 and 26-04-1973?*
4. *Whether the transaction embodied in the registered sale deed dated 10-08-1982 is factually a redemption of the anomalous mortgage of the suit schedule property by Late Shankar which is camouflaged as a sale deed?*
5. *Whether the aforesaid redemption of the mortgage of the suit schedule house by the Late Shankar enures to the benefit of his brothers namely Late Vishwanadham (1st Defendant) and Late Vithal, as their benamidar?*
6. *Whether Vishwanadham continued to reside in the suit schedule house along with his family members notwithstanding the registered sale deed dated 10-08-1982?*
7. *Whether Late Shankar acquired exclusive ownership rights over the entire suit schedule premises by virtue of the registered sale deed dated 10-08-1982 to the exclusion of his elder brother Late Vishwanadham (1st Defendant)?*
8. *Whether there is a Jural relationship of Landlord and Tenant inter-se the Late Sjhankar and his family members (Plaintiffs) and Late Vishwanadham and his family members (Defendants)?*

9. *Whether the Judgment & Decree of dismissal of O.S.No. 264 of 2002 dated 26-07-2005 constitutes Res-Judicata or, constructive Res-Judicata in the subject suit?*

5. Learned counsel for the respondents admits that all the pleas relating to the additional issues are taken in the written statement. The issues already framed by the Court below are very general in nature and not specific on the contentions taken by the petitioners herein in their written statement. The opinion of the Court below in dismissing the petition is that the petition is filed with a long delay. In order to take care of the delay that can be probably caused by framing additional issues, learned counsel for the petitioners undertakes that no petition to recall any witness, who is already examined before the Court below, would be filed by them. In the light of the above undertaking, I consider that there would be no prejudice caused to the respondents if the Court below is directed to frame the additional issues as sought by the petitioners herein. However, the Court below can look into the contents of the written statement before framing the additional issues.

6. With the above observation and direction, the civil revision petition is disposed of. Pending miscellaneous petitions, if any, in this revision petition shall stand closed in consequence. No costs.

Date: 04-10-2017
JSK

T.RAJANI, J.