

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.5088 OF 2015

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order, dated 10-09-2015 passed in I.A.No.514 of 2015 in O.S.No.681 of 2012 by the II Additional Senior Civil Judge, Vijayawada.

2. Petitioner herein is the defendant, whereas the respondents herein are the plaintiffs in O.S.No.681 of 2012, which was filed for partition of the suit schedule properties.

3. Pending suit, petitioner herein filed the above interlocutory application under Order XIV Rule 5 and Section 151 CPC to frame additional issues in view of defence taken by the petitioner in the written statement. The trial Court dismissed the said application. Aggrieved thereby, the present revision is preferred.

4. The respondents herein filed the above suit for partition and separate possession of the suit schedule properties into three equal shares and for allotment of one such share to each of the plaintiffs by metes and bounds and paid the Court fee under Section 34 (2) of A.P.C.F. and S.V. Act claiming that the plaintiffs and the defendant are in joint and constructive possession of the suit 'A' to 'C' schedule properties. But, the counsel for the petitioner/defendant raised a specific contention that the plaintiffs and defendant are living separately since 2003 and the suit O.S.No.210 of 2015 and O.P.No.205 of 2003 were also filed, as such, question of joint possession and enjoyment does not arise and thereby, the value of the suit and Court fee paid thereon is not proper and requested to reject the suit. But no issue was framed by the trial Court. The trial Court framed only four issues, which are as follows:

1. Whether the plaint A and B schedule properties are joint family properties of plaintiffs and defendant?

2. Whether the defendant purchased C schedule properties with the income derived on the plaint A and B schedule properties at Kartha?

3. Whether the plaintiff is entitled for the partition of the schedule properties?

4. To what relief?

5. According to Order XIV Rule 1 CPC, when one party affirm a fact or law and denied by the order, the issue would arise either issue of fact or law. Here, the plaintiffs affirmed that they are in joint and constructive possession of the properties. Whereas the defendant's contention is that they are out of possession and the joint possession pleaded by the plaintiff is not correct in view of litigation pending between them and the Court fee paid thereon is not correct. In such a case, an issue would arise under Order XIV Rule 1 CPC. But, the trial Court did not frame any issue erroneously by exercising Order XIV Rule 5 CPC and that this Court can frame an additional issue or re-cast any issue appropriately. Hence, the following issue is framed:

“Whether the plaintiffs and defendant are in joint and constructive possession of the properties, if not, whether the Court fee paid on the plaint under Section 34 (2) of the A.P.C.F. and S.V. Act is sufficient?”

6. As the issue is framed by this Court, the petitioner/defendant is required to adduce evidence only with regard to possession in view of Order XVIII Rule 17 CPC as the Court is competent to recall any witness at any stage of the suit who has been examined and may subject to law of evidence for the time being in force and put such question to him as Court thinks fit. Therefore, by exercising power under Order XVIII Rule 17 CPC, D.W.1 is re-called and permitted to adduce evidence with regard to question of joint and constructive possession of plaint 'A' to 'C' schedule properties in view of framing of additional issue by this Court and the

respondents/plaintiffs are at liberty to cross-examine the witness on the limited point. The petitioner shall be permitted to adduce evidence only on the issue framed by this Court. The trial Court is directed to fix a date for adducing evidence on the issue now framed by this Court and in any event not more than two months and decide the matter in accordance with law.

7. Accordingly, the Civil Revision Petition is allowed. No order as to costs. Miscellaneous petitions, if any pending, in this revision shall stand closed.

DATED: 04-07-2017.
Hsd

M.SATYANARAYANA MURTHY, J

