

**HON'BLE SRI JUSTICE A.RAJASHEKER REDDY**

**Civil Revision Petition No. 1122 OF 2017**

**ORDER:**

This Civil Revision Petition is filed against order dated 06.01.2017 in I.A.No.1070 of 2016 in O.S.No.3 of 2014 on the file of II Additional District Judge, Karimnagar at Jagtial, wherein the Court below dismissed the application filed by the petitioners for framing additional issue under Order 14 Rules 1 and 3 r/w Section 151 CPC, on the ground that the issue was framed by the Court below on 31.07.2014 itself and also on the ground that similar petition i.e., I.A.No.792 of 2016 in O.S.No.3 of 2014 for framing additional issue was dismissed and the same operates as *res judicata*.

Heard learned counsel for the petitioner and learned counsel for the 1<sup>st</sup> respondent.

Learned counsel for the petitioner submits that the application filed by the 2<sup>nd</sup> respondent (1<sup>st</sup> defendant in the suit) for framing additional issue in I.A.No.792 of 2016 was dismissed on the ground that the 2<sup>nd</sup> respondent has not taken a plea that the suit schedule property is an ancestral property. He further submits that the petitioner, who is 3<sup>rd</sup> defendant in the suit raised such a plea stating that the suit schedule property is ancestral property, as such, his application would not have been dismissed on the ground of dismissal of I.A.No.792 of 2016 filed by the 2<sup>nd</sup> respondent (1<sup>st</sup> defendant in the suit). He also submits

that the petitioner/3<sup>rd</sup> defendant had specifically raised a plea in the written statement that the suit schedule property is ancestral property.

On the other hand, learned counsel appearing for the 1<sup>st</sup> respondent submits that issues are framed in the year 2014 and suit is coming up for cross-examination of P.W.1. He also submits that after a period of two years, present application is filed when the suit itself is for specific performance of agreement of sale. He further submits that the petitioner is also a party to the suit and the competency of 1<sup>st</sup> defendant to execute agreement of sale can also be decided and that while deciding the issue already framed in that regard, petitioner can lead evidence, in support of his contention.

It is to be seen that issues are framed on 31.07.2014 and the main suit is coming up for cross-examination of P.W.1 and already the Court below framed issue whether the 1<sup>st</sup> respondent/plaintiff is entitled for specific performance of an agreement of sale dated 24.06.2012. Therefore, it is open for the petitioner to lead evidence regarding competency of 2<sup>nd</sup> respondent (1<sup>st</sup> defendant in the suit) to execute agreement of sale. The petitioner would have filed an application immediately after issue is framed on 31.07.2014. Moreover, no reason is forthcoming why the said application is filed when the matter is posted for cross-examination of P.W.1.

In view of the same, I do not see any illegality or infirmity in the order passed by the Court below warranting interference of this Court by exercising jurisdiction under Article 227 of Constitution of India.

Accordingly, this Civil Revision Petition is dismissed. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending in this Civil Revision Petition shall stand closed.

10-03-2017  
kvs



**A.RAJASHEKER REDDY,J**

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