

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No.6013 of 2016

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, by the defendants 1 and 9, is directed against the order, dated 17.11.2016, of the learned II Additional Senior Civil Judge, (Judge, Fast Track Court), Mahabubnagar, passed in I.A.No.1 of 2016 in O.S.No.24 of 1999, filed by the petitioners/defendants 1 and 9 under Order XIV Rule 5 read with Section 151 of the Code of Civil Procedure, 1908, requesting to frame additional issues in the suit, as mentioned in the petition list.

2. I have heard the submissions of Sri K.A.Narasimham, the learned counsel for the petitioners at the stage of admission. I have perused the material record.

3. The facts which are necessary for consideration and which are to be stated as a prelude to this order, in brief, are as follows:-

The respondents 1 and 2 herein/plaintiffs brought a suit for partition against the defendants. The said suit is being resisted by some of the defendants. Originally, on 19.09.2002, the following two issues were framed by the Court below.

1. Whether the plaintiff is entitled for partition as prayed for?
2. To what relief?

Subsequently, on 28.04.2004, the following additional issue was also framed.

“Whether D-7 is in exclusive possession of an extent of 121.5 Sq.yards in pursuance of a Registered gift deed in his favour, executing by defendant No.2 who accrued the same by way of a gift deed from late Sambaiah?”

Subsequently, on the death of the 8th defendant, the 9th defendant was impleaded, based on the recitals of a registered Will deed. Thereafter, both the parties filed additional pleadings. The defendants 1 and 9 contended before the Court below that the plaintiffs, who are the daughters of one Late A.Sambaiah, filed the suit for partition and that after the death of the 8th defendant, the 9th defendant was added based on a registered Will, and that additional pleadings were also filed and, therefore, in view of the material facts pleaded in the additional pleadings of the parties, it is necessary to frame the additional issues. That application was resisted by the plaintiffs stating that in a suit for partition, the burden is on the plaintiffs to prove the material facts pleaded in support of their claim in the suit and that the first issue originally framed is a comprehensive issue and that since the trial is concluded, no further issues need be framed. However, considering the facts of the case and in the light of the fact that both the parties filed additional pleadings, after the addition of the 9th defendant as the legal heir of the deceased 8th defendant, the trial Court framed the following additional issues:

1. Whether the suit schedule properties are the joint family properties of the plaintiffs and defendants 1 to 8?
2. Whether the suit is bad for non-joinder of the necessary parties, i.e., the purchasers of 'B' schedule property under registered sale deeds documents Nos.57/ 1996 to 61/ 1996 and 537/ 1996 to 540/ 1996?
3. Whether the registered gift deed bearing No.2131/ 1990 dt. 27.08.1990 is true, valid and binding on the parties?
4. Whether the Will Deed dt.29.08.2002 executed by the defendant No.8 in favour of the defendants Nos.1 and 9 pertaining to 'A' schedule property is true and valid?

4. Thus, the trial Court allowed the petition of the petitioners/defendants 1 and 9 in part. Aggrieved thereof, the petitioners/defendants 1 and 9 filed this revision *inter alia* contending that in the facts and circumstances of the case and that as there is a family feud and it has to be given a quietus once and for all, the trial Court ought to have framed all the issues as suggested in the petition list of the petitioners/defendants 1 and 9 and that the trial Court committed a grave error in allowing the petition in part and framing only few of the issues suggested instead of framing all the issues mentioned in the petition list.

5. The short question that falls for consideration is as to whether the petitioners/defendants 1 and 9 are entitled to request the Court below to frame the issues omitted to be framed and which are also stated in their petition list.

6. I have gone through the material record and bestowed my attention to the facts and given earnest consideration to the submissions.

7. The issues originally framed and the additional issues framed subsequently are already stated *supra* while narrating the facts and the chronology of events, in detail. The first issue originally framed and the first additional issue which was framed later are both comprehensive issues. That apart, the issues subsequently framed by the Court below are with regard to the validity and binding nature of the Gift Deed and the Will Deed, which are adverted to in the pleadings of the parties. The said issues, which are comprehensive, cover all the aspects of the matter, which are necessary to be considered for effective adjudication of the *//s* between the parties. Viewed thus, this Court finds that non-framing of the omitted issues, that are mentioned in the petition list, by the trial Court is not going to prejudice any of the parties, as the aforementioned issues and additional issues already framed by the trial Court would be sufficient to effectively resolve the controversy involved in the *//s* and that determination of all the said issues would give a quietus to the dispute on all aspects of the matter. It is to be noted that the material facts, which constitute the cause of action and which are necessary to be proved by the plaintiff to succeed in the suit and the denial of such material facts by the defendants in the written statement and the further material facts, which the defendants plead independently to succeed in their defence, give

rise to issues. In the case on hand, such issues, which are required to be framed on the basis of the material facts, alleged and denied, are framed by the trial Court while dealing with the request of the petitioners/defendants 1 and 9.

8. On the above analysis, this Court finds that the order impugned brooks no interference and that the Civil Revision Petition, which is de void of merit, is liable to be dismissed.

9. In the result, the Civil Revision Petition is dismissed. There shall be no order as to costs.

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

27th January, 2017
Bvv

M.Seetharama Murthi, J

