

* THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

+Civil Revision Petition No.5558 of 2017

%24.10.2017

Venkataiah and others

... Petitioners

Vs.

\$ Lakshmiddevamma and others

... Respondents

! Counsel for the Petitioners : Sri J. Suresh Babu

Counsel for Respondents : --

<Gist :

>Head Note:

? Cases referred:



THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI**CIVIL REVISION PETITION No.5558 OF 2017****ORDER:**

This Civil Revision Petition, under Article 227 of the Constitution of India, by the unsuccessful respondents-defendants is directed against the order, dated 15.09.2017, of the learned Senior Civil Judge, Narayanpet, passed in I.A.No.284 of 2017 in O.S.No.20 of 2010.

2. At the stage of admission, I have heard the submissions of Sri J. Suresh Babu, learned counsel for the petitioners-defendants. I have perused the material record.

3. The facts, which are required to be stated as a prelude to this order, are as follows:

“Respondents/plaintiffs brought the suit against the petitioners/defendants for partition of the suit schedule property into two equal and equitable shares and allotment of one such separated share to the respondents/plaintiffs. The petitioners/defendants filed written statement resisting the suit. The suit is at the advanced stage of trial. At that stage, the respondents/plaintiffs filed the subject application, under Order XIV Rule 5(1) read with Section 151 Code of Civil Procedure, 1908, requesting the trial Court to frame the following additional issues:

“1. Whether the suit schedule properties are the self acquired properties of Late Ramanna, S/o. Venkanna as pleaded by the defendants?

2. Whether Late Rangappa was separated from joint family and his father Ramana gave him substantial amount and Gold to him?”

The said application was resisted by the 1st petitioner/1st defendant by filing a counter. On merits and by the order impugned in this revision petition, the trial Court allowed the subject application of the respondents/plaintiffs and framed the following additional issues:

- “1. Whether the suit schedule properties are the self acquired properties of late Ramana?
2. Whether the father of the defendant No.1 separated during the life time of late Ramana by taking away substantial amount and gold?”

Aggrieved thereof, the petitioners/defendants are before this Court.

4. Learned counsel for the petitioners/defendants would submit that after the evidence of both sides is almost completed, the respondents/plaintiffs filed the subject application at a belated stage and that by virtue of framing of additional issues, the burden of proof is now shifted to the petitioners/defendants and that the petitioners/defendants are now required to prove that the properties are the self-acquired properties of Late Ramana and that the trial Court failed to frame an issue as to whether the suit properties are ancestral properties, as being claimed by the respondents/plaintiffs, and that by virtue of the fact that additional issues are framed, the respondents/ plaintiffs are now intending to get the evidence reopened for leading fresh evidence and that therefore, framing of additional issues caused prejudice to the petitioners/defendants and hence, the order impugned is liable to be set aside.

5. I have given earnest consideration to the facts and submissions. I have carefully gone through the plaint and written statement. In the plaint, it is alleged that the properties are liable for partition, as the respondents/plaintiffs are entitled to the share of late Rangappa. Apart from the said averment, there are other relevant averments in the plaint. In the written statement, the petitioners/defendants specifically pleaded that Late Ramana was in possession of all the properties as absolute owner and that late Ranganna @ Rangappa was the elder brother of 1st petitioner/1st defendant. The petitioners/defendants also raised a defence to the effect that late Rangappa separated during his life time by taking away substantial amount and gold and therefore, the suit of the respondents for partition is liable for dismissal. However, touching the said defence, which raises necessary issues, the trial Court has not framed any issues at the inception. Therefore, the respondents/plaintiffs filed the subject application for framing the afore-stated additional issues. In view of the fact that material facts are averred and denied and an issue arose for determination on such assertions and denials, the trial Court was obliged to frame the necessary issue for determination and for giving a quietus to the *lis*. Having considered the pleadings, this Court finds that the trial Court is justified in framing the additional issues. Merely because an issue framed casts the initial onus of proof on one of the parties, the trial Court is not precluded from framing such an issue. The Civil Rules of Practice ordains that every material proposition of fact and every proposition of law, which is affirmed by one side and denied by the other shall be made subject matter of a separate issue and that every issue of

fact shall be so framed as to indicate on whom the burden of proof lies and that generally, an issue must be framed in the affirmative, unless there is a Rule reversing the onus of the proof. It is axiomatic that where there are several issues, the burden of proving some of which lies on the other party, the party beginning may, at his option, either produce evidence on those issues or reserve it by way of answer to the evidence produced by the other party; and, in the latter case, the party beginning may produce evidence on those issues after the other party has produced his evidence, and the other party may then reply specifically on the evidence so produced by the party beginning; but the party beginning will then be entitled to reply generally on the whole case. The distinction between burden of proof, which is a legal burden, and the onus of proof, which is the burden to introduce evidence, is well recognized. It is well settled that the legal burden never shifts; but, the onus of proof, that is, the burden to introduce evidence, shifts from side to side during the course of trial. The power of the Court to add/amend/strike out issues is also undisputed. The Court may at any time before passing a decree amend the issues or frame appropriate additional issues. Further, if any new issues are framed after the trial has made some progress, the Court is obliged to give opportunity to both sides to adduce fresh/further evidence on such newly framed issues. In the light of the facts and the legal position obtaining, this Court finds that the order of the trial Court is justified and brooks no interference.

6. On the above analysis, this Court finds that the revision petition is devoid of merit.

7. In the result, the Civil Revision Petition is dismissed.

Miscellaneous Petitions, if any, pending in this revision petition shall stand closed. There shall be no order as to costs.

M.SEETHARAMA MURTI, J

October 24, 2017

Note: LR copy to be marked.

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