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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No. 852 of 2013**

{Arising out of Order dated 21.10.2013 passed in Civil Suit No. 76-A/2013 by the 3rd Additional Judge to the Court of 1st Additional District Judge, Bilaspur}

Ravi Prakash Sharma, Son of Shri R.P.Sharma, aged about 40 years Resident of Gayatri Mandir Road, R-2, Vinoba Nagar, Bilaspur, Tahsil and District Bilaspur, Civil and Revenue District Bilaspur.

---- Petitioner**Versus**

1. Satyadev Pandey son of Shri Teja Prasad Pandey, aged about 60 years, Resident of Bus Stand, Bilaspur, Tahsil and District Bilaspur.
2. Dr. Krishna Pratap Pandey, son of Shri Keshav Prasad Pandey, aged about 37 years, Resident of Imlipara, Bilaspur, Tahsil and District Bilaspur.
3. Kirakant Robinson, son of P.C.Robinson, aged about 50 years, Resident of Near Kali Mandir, Tifra Bilaspur, Tahsil and District Bilaspur.
4. State of Chhattisgarh, Through the Collector, Bilaspur.

---- Respondents

For Petitioner	: Shri Raza Ali, Advocate.
For Respondents No. 1 & 2	: Shri K.R.Nair, Advocate.
For Respondent No. 3	: None
For Respondent/State	: Shri R.K.Gupta, Deputy Advocate General.

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice**Order on Board****29/01/2018**

1. Heard the learned counsel for the Petitioner and the learned counsel for the contesting Respondents No. 1 and 2.
2. Respondents No.1 & 2 instituted a suit for specific performance of a contract for sale. On the basis of an application made by the plaintiff under Order 1 Rule 10(2) of the Code of Civil Procedure, the Petitioner herein was impleaded as additional third Defendant. He filed written statement pleading that he is also a party to the agreement. It is submitted that the plaintiffs had also filed further pleading.

3. According to the Petitioner, he filed an application invoking the power of the trial Court under Order 14 Rule 5 of the CPC requesting the trial Court to frame an additional issue in relation to the pleadings of the third Defendant/writ petitioner. That has been dismissed. This is challenged invoking Article 227 of the Constitution.
4. The power under Article 227 of the Constitution is to be exercised most sparingly. Such exercise should be resorted to through the supervisory jurisdiction, during the pendency of a suit, only if it becomes absolutely necessary to do so to secure the ends of justice by resorting to such interference at such a stage. Otherwise, that would by itself amount to interfering with the course of the suit.
5. Sub Rule (2) of Order 14 Rule 5 of the CPC authorises the trial Court to strike out any issue that appears to be wrongly framed or introduced. That could be done at any time before passing of the decree. The power under Order 14 Rule 5(1) of the CPC to amend the issues or to frame additional issues for the purpose of determining the matters in controversy is also a matter which should be available with the trial court during the course of the adjudication. If the third Defendant has a plea contrary to the relief sought for by the Plaintiffs, it is upto the trial court to consider such contentions at trial. That power should be freely available with the trial Court till it decides the suit. That should not be crippled or curtailed through interference under supervisory jurisdiction because that will only affect the due process of the suit at the hands of the trial Court.
6. It has also to be noticed that the regular appellate jurisdiction against a civil court's decree under Section 96 of the Code would also encompass the question as to whether the trial of a suit has been misdirected on account of non-framing of proper issues with materials on record and

which would be available to be adduced by the parties. It is too premature a stage for the High Court under Article 227 of the Constitution to consider as to whether a particular issue ought to have been framed or not.

7. I therefore do not find any ground to exercise authority under Article 227 of the Constitution and interfere with the course of the trial court by vacating the impugned order though it will be open to the trial court to pass such orders during the course of the suit as it may deem necessary for proper trial.
8. It is however recorded that the learned counsel for the parties have submitted that on a different aspect, there is an order of stay handed down by the Supreme Court, though they are unable to mention the identity of that litigation stated to be pending before the Supreme Court.
9. In the result, this writ petition under Article 227 of the Constitution is dismissed. It is clarified that all issues touching the merits of the matter and the requirement for framing of any issue would stand left open for the Court below to deal with, in accordance with law during the course of trial of the suit.

Sd/-
(Thottathil B. Radhakrishnan)
CHIEF JUSTICE