

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL REVISION PETITION No.1898 OF 2018

ORDER:

The present revision petition, under Article 227 of the Constitution of India, is filed by defendant No.7 in O.S.No.645 of 2008 on the file of learned XVII Additional Senior Civil Judge, City Civil Court, Hyderabad, aggrieved over the order, dated 23.02.2018, passed in I.A.No.51 of 2018 in the said Suit, whereby and whereunder, an application filed by the revision petitioner, under Section 151 of the Code of Civil Procedure, 1908 (for short, 'the Code'), praying to delete issue Nos.3 to 10 on the ground that those issues are not necessary, since, the rights of the third parties and their title cannot be decided without there being any dispute pertaining to the same, was dismissed.

2. The revision petitioner also filed I.A.No.50 of 2018, under Order XIV Rule 5 read with 151 C.P.C., requesting to frame an additional issue, which he has formulated thus:

“Whether the suit is liable to be dismissed against the defendant Nos.2 to 7 since no relief has been claimed and no cause of action has been shown against them?”

3. In fact, the request made in I.A.No.50 of 2018 has been allowed by the Court below at the fag end of the suit proceedings.

4. Sri Bankatlal Mandhani, learned counsel for the revision petitioner, would fairly submit that the entire trial was completed and

at the stage of arguments, the revision petitioner - defendant No.7 has come up with the present applications and the Court below while allowing I.A.No.50 of 2018, dismissed the application in I.A.No.51 of 2018.

5. Consequence of allowing I.A.No.50 of 2018 is that the additional issue has to be decided along with other issues, though, the issues already framed, except issue Nos.1 and 2, are irrelevant, according to the learned counsel for revision petitioner. However, the Court below has to decide whether they are really relevant or necessary to adjudicate upon the *lis* between the parties. So, the limited scope is in relation to framing of issue now suggested.

6. Certainly, there should not be any grievance at all to the revision petitioner herein, who is defendant No.7, at whose initiation the said additional issue is settled for trial. It is well settled that when the entire trial is completed, at the stage of arguments, coming forward with the relief as in I.A.No.51 of 2018 is misconceived. In fact, basing on the evidence let in by both the parties, since, both the parties have completed their evidence, and in the light of the arguments to be tendered, the Court below is required to answer the issues. That was the only exercise that remained. Therefore, there is absolutely no merit in the present revision petition, which is filed challenging the dismissal order passed in I.A.No.51 of 2018.

7. So far as the request to treat the additional issue as preliminary issue is concerned, it is not for this Court to give any direction or express any opinion. It is for the Court below to proceed in accordance with the procedure laid down under the provisions of the Code. If such a request is made, it is for the Court below to decide in accordance with law whether to take up the additional issue as preliminary issue or to take up the additional issue along with other issues.

8. Hence, the present revision petition is dismissed, at the stage of admission, confirming the order, dated 23.02.2018, passed in I.A.No.51 of 2018 in O.S.No.645 of 2008 on the file of learned XVII Additional Senior Civil Judge, City Civil Court, Hyderabad.

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

A. SHANKAR NARAYANA, J

March 22, 2018.
MD