

SMT JUSTICE T. RAJANI

CIVIL REVISION PETITION Nos.4096 AND 4097 OF 2018

COMMON ORDER:

CRP No.4097 of 2018:

This petition is filed, under Article 227 of the Constitution of India, questioning the order, dated 06.04.2018, passed in I.A.No.236 of 2018 in O.S.No.232 of 2011.

2. Heard the counsel for the petitioners. None appears for the respondent in spite of notice.

3. The petitioners herein are the defendants in the suit. The plaintiff filed the suit viz., O.S.No.232 of 2011 for declaration and recovery of possession, wherein the plaintiff filed the impugned petition viz., I.A.No.236 of 2018 under Order XIV Rule 5 r/w Section 151 CPC seeking for framing of additional issues. The court below, under the impugned order, allowed the impugned petition. Questioning the said order, the petitioners filed the present civil revision petition.

4. The counsel for the petitioners contends that the additional issues, which are proposed to be framed by the court below, would throw a burden on the petitioners in proving the title of his vendor. He submits that in a suit for declaration of title and possession the entire burden is on the plaintiff and no burden can be placed on the defendants. The suit has to stand or go only on the case set up by the plaintiff. In support of his contention he relied upon a ruling of the apex court reported in

*Union of India and others vs. Vasavi Cooperative Housing Society Ltd., and others*¹, wherein it was held that in a suit for declaration of title, the burden always lies on the plaintiff to make out and establish a clear case for granting such a declaration and the weakness, if any, of the case set up by the defendants would not be a ground to grant relief to the plaintiff. The legal position, therefore, is clear that the plaintiff, in a suit for declaration of title and possession, could succeed only on the strength of its own title and that could be done only by adducing sufficient evidence to discharge the onus on it, irrespective of the question whether the defendants have proved their case or not. Even if the title set up by the defendants is found against them, in the absence of establishment of the plaintiff's own title, the plaintiff must be non-suited.

5. This being the position of law, the issues proposed to be framed by the court below, place burden on the defendants in proving the title of his vendor. Hence, the framing of such issues cannot be permitted by the court and the impugned order is liable to be set aside.

CRP No.4096 of 2018:

6. This petition is filed, under Article 227 of the Constitution of India, questioning the Memo filed by the plaintiff seeking to adduce rebuttal evidence.

¹ (2014) 2 SCC 269

7. The counsel for the petitioners submits that Order XVIII Rue 3 CPC permits rebuttal evidence only when there are several issues, the burden of proving some of which lies on the party.

8. Order XVIII Rule 3 of CPC reads as under:

"3. Evidence where several issues

Where there are several issues, the burden of proving some of which lies on the party, the party beginning may, at his option, either produce his 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 all his evidence, and the other party may then reply specially on the evidence so produced by the party beginning; but the party beginning will then be entitled to reply generally on the whole case."

9. A reading of the above would make it clear that when there is no burden cast on the defendant, the plaintiff does not have a right to adduce rebuttal evidence. In view of the orders passed in CRP No.4097 of 2018, supra, since there are no issues casting burden on the defendants, the plaintiff cannot be permitted to adduce rebuttal evidence.

10. In view of the above, the impugned order is liable to be set aside.

11. Accordingly, both the Civil Revision Petitions are allowed and the respective impugned orders are set aside. Interim stay granted by this court on 20.07.2018 shall stand vacated.

As a sequel, the miscellaneous applications, if any pending,
shall stand closed.

T. RAJANI, J

September 11, 2018
LMV

