

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 3573 of 2018

ORDER:

1) Assailing the order, dated 30.04.2018 passed in I.A.No.346 of 2018 in O.S.No.39 of 2008 by the IX Additional District and Sessions Court, East Godavari, Rajamahendravaram, wherein the petition filed by the petitioners/defendants under Order 14 Rule 5 of the Code of Civil Procedure (for short "the CPC") seeking to frame additional issues was dismissed, the present Revision came to be filed under Article 227 of the Constitution of India.

2) The first respondent herein, who is the second plaintiff, filed O.S.No.39 of 2008 for partition of the plaint schedule property into four equal shares and for allotment of three of such shares to the plaintiff, together with separate possession. It is stated that the plaintiffs 1 and 2 are brothers and third plaintiff is their married sister. The plaint schedule property was the property acquired under the registered sale deed dated 26.10.1945 by the maternal grandfather of the plaintiffs. It is further stated in the plaint that the maternal grandfather of the plaintiffs who died in the year 1963, and who possessed the plaint schedule property and other properties, was survived by the mother of the

plaintiffs and the plaintiffs as his legal heirs to succeed to his properties. While things stood thus, they came to know recently that an extent of Ac.3.91 cents in R.S.No.64/2 was sold in court auction, pursuant to the money decree in O.S.No.302 of 1964 and the sale in the court auction in respect of 3/4th share of the plaintiffs in the plaint schedule property is void ab-initio and it is not binding on the plaintiffs, moreso, when the plaintiffs and defendants are in joint possession and enjoyment of the plaint schedule property.

3) The petitioners/defendants have filed written statement, way back in the year 2008, denying the averments made in the plaint. Pursuant to the respective pleadings made by both the plaintiffs and defendants, issues have been framed and the trial has also commenced. At the stage of arguments, the petitioners/defendants filed the present I.A.No.346 of 2018 under Order 14 Rule 5 of the C.P.C., to frame additional issues viz., i) Whether the suit is barred in view of dismissal of O.S.No.391 of 1974 filed by the second plaintiff? ii) Whether the suit for partition and possession is not maintainable without seeking relief of declaration?

4) After considering the rival pleas, the trial court dismissed the said I.A., holding that there is no necessity for framing additional issues. Challenging the same, the present Civil Revision Petition came to be filed.

5) Heard the learned counsel for the petitioners and respondents.

6) Order XIV of code of Civil Procedure, 1908 which deals with settlement of issues and Rule reads as under:

"Framing of issues".

(1) Issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other.

(2) Material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence.

(3) Each material proposition affirmed by one party and denied by the other shall form the subject of a distinct issue.

(4) Issues are of two kinds:

(a) issues of fact.

(b) issues of law.

(5) At the first hearing of the suit the court shall, after reading the plaint and the written statement, if any, and after examination under Rule 2 of Order X and after hearing the parties or their pleaders ascertain upon what material propositions of fact or of law the parties are at variance, and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to depend.

(6) Nothing in this rule requires the court to frame and record issues where the defendant at the first hearing of the makes no defence."

7) A perusal of the order passed by the Court below and the contents of petition made by the petitioner in I.A.No.346 of 2018 would show that the I.A., was filed to frame additional issues under Order 14 Rule 5 of the CPC, questioning the maintainability of the present suit, in view of the dismissal of O.S.No.391 of 1974. But, on a perusal of the written statement filed by the defendants, does not anywhere show a pleading with regard to the maintainability of the suit, in view of the dismissal of O.S.No.391 of 1974. No-doubt Order 14 Rule 5 of the C.P.C., contemplates that the Court may at any time before passing a decree, amend the issues or frame additional issues on such terms as it thinks fit, and such amendments or additional issues as may be necessary for determining the matters in controversy between the parties shall

be so made or framed, but, in the instant case, the petitioners sought to frame an additional issue namely as to whether the present suit is maintainable in view of dismissal of O.S.No.391 of 1974, which was not pleaded in the written statement. It is mandatory to plead specifically in the original statement as required under Order 8 of the C.P.C. It is also borne out from the record that the petitioners/defendants were aware about the dismissal of the said suit and being aware of the said fact, they did not plead it in the written statement. As such, it may not be proper to frame an additional issue on that aspect.

8) Further, the trial Court has framed as many as 9 issues before proceeding with the trial, which are as under:

- 1) Whether the Will dated 26.07.1959 executed by Chinnam Subbayya pleased by the plaintiffs is true and valid?
- 2) Whether Court sale conducted on 23.07.1973 and sale certificate thereon dated 24.08.1973 are not valid and binding on the plaintiffs?
- 3) Whether the plaintiffs are joint owners of plaint schedule properties?
- 4) Whether the plaintiffs are in joint possession of the plaint schedule property as contended?

- 5) Whether the plaintiffs are having any right to claim portion of suit schedule property?
- 6) Whether the suit is in time?
- 7) Whether the plaintiffs are entitled for partition and separate possession as claimed?
- 8) Whether the plaintiffs are entitled for future profits?
- 9) To what relief?

8) Out of the nine issues framed, issue Nos.3, 4 and 7 are comprehensive in nature and as such there is no need to frame additional issues, as sought for by the petitioners, more so without there being any specific plea in the written statement to that effect. Apart from that an additional issue came to be framed on 10.02.2011, which is as under:

"Whether the suit is bad for non-joinder of proper and necessary parties?"

9) As such, the court below has considered the same and rightly came to the conclusion that there is no necessity for framing additional issues. In view of the same, it can be said that there is no illegality in the order of the trial court and the same warrants no interference.

10) Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs. As a sequel to it, miscellaneous petitions pending if any in this C.R.P. shall stand dismissed.

JUSTICE C. PRAVEEN KUMAR

Dt:12.10.2018

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