

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P. No.5620 of 2017

O R D E R:

This Revision is filed under Article 227 of Constitution of India challenging the order dt. 04.07.2017 in I.A.No.2540 of 2017 in O.S.No.406 of 2003 of the Chief Judge, City Civil Court, Hyderabad.

2. Petitioners herein are the defendants 3 and 5.
3. The said suit was filed by the 1st respondent against the petitioners and other respondents for partition and separate possession of the plaint 'A' and 'B' schedule properties and for allotment of 1/4th share therein.
4. It is the contention of the 1st respondent that the plaint 'A' schedule property was purchased by the 2nd respondent/D.1 from the funds of ancestral nucleus and even the 'B' schedule property was acquired through joint family funds, out of the ancestral nucleus.
5. The 2nd respondent/D.1 filed written statement stating that there is no ancestral nucleus was involved in the purchase of the properties, that 'A' schedule property is a self acquired property, but he later constituted a Hindu Undivided Family and declared the properties and businesses before the Income Tax authorities as that of the

Joint Family and so the properties have to be treated as Joint Family Properties.

6. He alleged that differences arose between the 1st respondent and defendants 3 and 4 over the sharing of the properties and businesses and though the 2nd respondent/D.2 wanted a peaceful and amicable settlement, it did not materialize because of the actions of the 3rd respondent/2nd defendant.

7. Separate written statement was filed by the 3rd respondent/2nd defendant stating that the plaint schedule did not include all the Joint Family properties belonging to the Hindu Undivided Family. He supported the 1st respondent/plaintiff and stated that 'A' schedule property was purchased through ancestral nucleus funds. He opposed the claim of the petitioners/D.3 and stated that she is not a necessary party to the suit since she got married in the year 1987 itself. He alleged that the suit is a collusive suit between the 1st respondent, 2nd respondent and the 1st petitioner.

8. Later, additional written statement was filed by the 3rd respondent/2nd defendant giving a list of certain other properties which he states to be joint properties and requested that those properties be included in the plaint schedule for division.

9. The 1st petitioner filed the written statement and counter claim contending that 'A' schedule property was purchased by the 2nd respondent/D.1 out of his own earnings; that there is no ancestral nucleus; that the 2nd respondent/D.1 is not a Karta of a Hindu Undivided Family and erroneous and self serving income tax returns submitted by the 2nd respondent/D.1 mis-describing 'A' schedule property as H.U.F property before Income Tax Department, will not be binding on her.

10. It is also contended that 'B' schedule property belongs to a firm M/s.Prakash Paints; that outsiders were partners of the firm and left the firm. Thereafter, it acquired the status of family business and all the members of the family have the equal shares therein.

11. He contended that the 2nd respondent/D.1 executed a registered Will deed dt.10.06.2004 in favour of the 5th defendant/2nd petitioner and the 'A' schedule property should be allotted to the 5th defendant/2nd petitioner and in the 'B' schedule property, she is entitled to 1/4th share.

12. The 2nd petitioner/1st defendant supported 3rd defendant/1st petitioner.

13. Initially, the following issues were framed on 05.08.2005:

“1. Whether the Plaintiff is entitled for Partition of Plaintiff Schedule Properties, if so, what shares?

2. Whether the Suit is bad for non-joinder of parties and non inclusions of other Properties at Gandhi Nagar, Jedcherla, Mahboobnagar District and Perur Village.”

14. Later following additional issues were framed on 07.06.2011:

“1. In the circumstances, pleaded in the Additional Written Statement filed by the 2nd defendant, whether the Properties mentioned in Items A to L of Para No.6 of the said Additional Written Statement are also Properties liable for Partition among the parties and if so, whether they are includable as properties liable for Partition?

2. Whether the Properties mentioned in Item No.A to L, Para No.6 of the Additional Written Statement of the 2nd Defendant are liable for Partition among the parties in the Suit and if so, what shall be appropriate order as regards, those properties in this Suit?

3. Whether the Suit has filed is not maintainable, since filed for partial Partition for not including in the Plaintiff Schedule are partible Properties?”

15. Much later, on 01.03.2017, the following additional issues were framed:

“1. Whether ‘A’ and ‘B’ schedule properties constitute the ancestral Properties of the 1st Defendant or whether they are self-acquired Properties?

2. Whether the 4th Defendant is merely a Benamidar of the 2nd Defendant created to enable the 2nd Defendant to illegally claim the double share?

- 3.** Whether the registered Will dt.10-06-2004 is genuine, valid and binding?
- 4.** Whether the 5th Defendant exclusively entitled for the share of the 1st Defendant?
- 5.** Whether the 2nd Defendant is entitled for 1/4th share of the Schedule Properties?
- 6.** Whether the 3rd Defendant is entitled to be Counter Claim of Mandatory Injunction?
- 7.** Whether the Plaintiff is not in joint possession and if so, the Court fee paid under Section 34(2) of the APCF & SV Act is not correct?
- 8.** Whether the Plaintiff deliberately excluded the Properties mentioned in the Additional Written Statement of the 2nd Defendant and if so, the Suit for Partition is not maintainable?
- 9.** Whether the 'B' Schedule Property belongs to Partnership Firm and if so, the 3rd Defendant has no share in it?"

16. Petitioners then filed I.A.No.2540/2017 seeking framing of 4 other issues which read as under:

- i.** Whether D-1 inherited or, acquired the 'A' and the 'B' scheduled properties as a Karta of his H.U.F. or, as an individual.
- ii.** Whether the Plaintiff and D-2 and D-4 prove the existence of a Nuclues and/or, blending of the 'A' and 'B' scheduled properties by D-1 in the said Nuclues.
- iii.** Whether the Hon'ble Court will exercise discretion (as required under Section 58 of the Indian Evidence Act, 1872) ti require Plaintiff and Defendants 2 and 4 to prove the suit claim and their respective defences qua the 'A' and 'B' scheduled properties despite the admissions made by the deceased 1st defendant in his written statement.

iv. Whether the admissions made by the deceased 1st defendant in his Written Statement prevent the 3rd and 5th Defendants from pleading and providing that the 'A' and 'B' scheduled properties factually constitute his self acquired properties under Section 8 of the Hindu Succession Act, 1956.”

17. According to the petitioners, these issues also arise out of the pleadings of the parties and they are required to be framed by the Court below for proper adjudication of the suit.

18. The 1st respondent/plaintiff opposed the said application and contended that while framing of the issues on 05.08.2005, 07.06.2011 and 01.03.2017, the Court below considered all the circumstances and there is no necessity to frame additional issues proposed by the petitioners.

19. He contended that the issues already framed are sufficient to decide the *lis* between the parties.

20. Respondents 3 and 4 also supported the 1st respondent and contended that the issues already framed are sufficient to decide the suit and there is no necessity to frame the issues proposed by the petitioners.

21. By order dt.04.07.2017, the Court below dismissed the application stating that proposed additional issue Nos.1 and 2 are covered by issue No.1 framed on 01.03.2017; and

proposed additional issue Nos.3 and 4 cannot be framed, but the parties are at liberty to argue on those points, and it can be taken into consideration at the time of adjudication of the *lis*. It observed that while framing the issues earlier, elaborate hearing was done and all aspects of the issues were considered.

22. Challenging the same, this Revision is filed.

23. Counsel for the petitioners contended that the view expressed by the Court below is not correct; that it ought to have framed the issues as proposed by the petitioners; that its that issue Nos.1 and 2 are covered by the additional issue No.1 framed on 01.03.2017 is incorrect; and issue Nos.3 and 4 proposed by the petitioners are also required to be framed and petitioners cannot be allowed to suffer because of the possibility of the Court below relying on the submission made in the written statement of the 2nd respondent/1st defendant as to how he acquired 'A' and 'B' schedule properties.

24. Sri Deepak Sancheti, learned counsel appearing for the 1st respondent and Ravinder Rao appearing for respondents 3 and 4 supported the order passed the Court below.

25. I have considered the pleadings of the parties as well as issues already framed by the Court below.

26. In my considered opinion, issue Nos. 1 and 2 proposed by the petitioners are covered by the additional issue No.1 framed on 01.03.2017 and the Court below has rightly held that there is no necessity to frame these issues. The contentions raised by the petitioners regarding these proposed additional issues can be agitated in the form of arguments in the Court below and the Court below shall consider the same on the basis of evidence on record and decide the suit.

27. Coming to issue Nos. 3 and 4 proposed by the petitioners, in my opinion, proposed issue No.3 dealing with Section 58 of the Indian Evidence Act, 1872, proposed issue No.4 dealing with the question about alleged admissions by the deceased 2nd respondent in his written statement precluding the petitioners from proving their case, are also points which can be canvassed by the petitioners before the Court below at the time of hearing of the suit, and there is no necessity to frame a specific issue in that regard. In my opinion, the Court below did not commit any error of jurisdiction in refusing to frame this issue.

28. Therefore, I do not find any merit in the Civil Revision Petition and accordingly dismissed.

29. However, petitioners are at liberty to raise contentions mentioned in the proposed additional issues at the time of

adjudication of the suit and the Court below will consider the same and decide the suit in accordance with law. No order as to costs.

30. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

M.S.RAMACHANDRA RAO, J

18.04.2019

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