

THE HONOURABLE SMT. JUSTICE P.SREE SUDHA

CIVIL REVISION PETITION NOS.1742 AND 1745 OF 2021

COMMON ORDER:

These Civil Revision Petitions are filed against the Common Order dated 20.09.2021 passed in I.A.Nos.271/2021 and 272/2021 by the II Additional District Judge (FTC), Adilabad at Mancherial.

2. Two applications are filed before the trial Court one for re-opening the suit, which was reserved for Judgment and another for framing of two additional issues under Order XIV, Rule 1(4) read with Section 151 of the Code of Civil Procedure, 1908.

3. The suit is filed for recovery of money basing on the mortgage deed. During the course of arguments, respondent Nos.1 to 3 filed an application to implead respondent No.4 as defendant No.2 and the same was allowed by the trial Court and brought respondent No.4 herein as defendant No.2 on record. As defendant No.2 is daughter and sister of the plaintiffs, the petitioner herein

has noticed that issue regarding non-joinder is not framed. Therefore, he requested the trial Court to frame the following two issues:

- i) Whether the suit is maintainable in view of arriving CH.Satyapriya as defendant No.2 to the present suit ?
- ii) Whether suit is bad for non-joinder of necessary party ?

which are necessary for comprehensive adjudication of the suit.

4. Respondent Nos.1 to 3/plaintiffs before the trial Court stated that suit is filed in the year 2016 and after filing of the written statement, issues were settled. Both parties have adduced evidence and when the matter is posted for arguments, petitioner/defendant No.1 has raised an objection regarding maintainability of the suit on the ground of non-joinder of defendant No.2. Accordingly, respondent No.4/defendant No.2 was impleaded but subsequently, she was set *ex parte*. Now, the matter is posted for Judgment as such the applications at this stage is not maintainable.

5. The trial Court after considering the arguments of both parties observed that the suit is filed for the recovery of Rs.31,16,892/- basing on mortgage deed in the year 2016 but the transaction pertaining to the year 2013. Both the parties have adduced their evidence and the matter is coming up for arguments for the last three years. Then, defendant No.2 was brought on record basing on the application filed in December, 2018 but even still there is no progress in the main suit. The defence of the petitioner/defendant No.1 is that his signature was obtained on the mortgage deed in connection with some other transactions pursuant to the compromise arrived between him and the husband of respondent No.1/plaintiff No.1. The trial Court observed that the validity of the document and other issues can be considered at the time of the Judgment and that the role and right of defendant No.2/respondent No.4 is not in dispute and never questioned by the plaintiffs, if at all, she got any right she would file appropriate suit against her family members. The main suit is filed for simple mortgage, which is governed by Order 34 of C.P.C. as such only issue framed

was “Whether the plaintiffs are entitled for passage of preliminary decree ?” which would be sufficient in a suit for simple mortgage and role of defendant No.2 is not going to decide or change the result of suit, with the said observation, the said two applications were dismissed. Aggrieved by the said common order, the present revision was filed.

6. The revision petitioner contended that the trial Court instead of reopening the matter and framing additional issues, dismissed the applications. Issues can be framed at any stage if the same are essential for proper adjudication of the case and to decide the issue in controversy by reopening the matter. Hence, prays the Court to set aside the common order.

7. No doubt suit was filed in the year 2016 regarding the transaction of 2013 and it is coming up for arguments from past three years but when the matter was posted for arguments, an application was filed to implead respondent No.4/defendant No.2 on record as she is proper and necessary party and the said application was allowed, notice was sent to the petitioner, as such, in view of

bringing defendant No.2 on record, the petitioner herein requested the Court to frame the above said two issues, which are necessary for determination of the controversy between the parties in the trial Court. When once defendant No.2 was brought on record, it necessitates the trial Court to frame the said two issues and also to decide the same for arriving to the right conclusion. Merely because the suit was at the stage of arguments, framing of the issues cannot be rejected. Therefore, the common order of the trial Court is not on proper appreciation of the facts and it is liable to be set aside.

8. In the result, Civil Revision Petitions are allowed, setting aside the Common Order dated 20.09.2021 passed in I.A.Nos.271/2021 and 272/2021 in O.S.No.58/2016 by the II Additional District Judge (FTC), Adilabad at Mancherial. As a sequence thereof, I.A.Nos.271/2021 and 272/2021 in O.S.No.58/2016 are allowed. In view of the facts and circumstances of the case, each party shall bear their own costs.

Miscellaneous applications pending, if any, shall stand closed.

JUSTICE P.SREE SUDHA

DATED 11.10.2022
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