

(2016) 08 AP CK 0047

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 2650 of 2016.

**Mungara Rajya Lakshmi (died) and another - Petitioners/Defendant
Nos.1 and 2. @HASH Dr. Palla Bhaskar and five Others**

Date of Decision : 24-08-2016

Acts Referred:

Citation : (2016) 6 ALT 504 : (2016) 6 AndhLD 506 : (2017) 1 CivCC 325 :
(2017) 1 CivilLJ 858 : (2017) 1 ICC 282

Hon'ble Judges : Sri S. Ravi Kumar, J.

Bench : Single Bench

Advocate : Sri. T.S. Anand, Advocate, for the Petitioner; Sri. M. Jayaram Reddy, Advocate, for the Respondent Nos. 1 and 2

Final Decision : Dismissed

Judgement

Sri S. Ravi Kumar, J. - This revision is preferred questioning order dated 28.01.2016 in I.A.No.726 of 2014 in O.S.No.69 of 2010 on the file of Family Court-cum-VI-Additional District Judge, Kadapa.

2. Revision petitioners herein are defendant Nos.1 and 2 in the above referred suit O.S.No.69 of 2010 and they filed I.A.No.726 of 2014 invoking Order XIV Rules 3 and 5 of C.P.C. requesting the Court to frame additional issues with regard to the disputed points in controversy pertaining to rectification of survey number, court fee aspect, points leading to rejection of the plaint and estoppel. This application was resisted and the Court below on a consideration of material on record dismissed the application on the ground that the alleged points on which the defendants sought for framing of separate issues are no longer required as the evidence was already adduced with regard to those points. Aggrieved by the same, present revision is preferred.

3. Heard arguments.

4. Advocate for revision petitioners contended that in the plaint, plaintiffs prayed the relief for rectification of survey number under para 12 (a) and the Court below has not framed any issue with regard to rectification of survey number and

revision petitioner No.2 and other defendants, who are brought on record on the death of Rajya Lakshmi, noticed this defect and filed application with a request to frame four additional issues proposed by defendant Nos.2 to 6 and the Court below has not properly appreciated the material and dismissed the application simply on the ground that the evidence was already let in.

5. On the other hand, advocate for plaintiffs submitted that the Court below rightly dismissed the application and that there are no grounds to interfere with the order of the Court below.

6. Now the point that would arise for my consideration in this revision is:

Whether the order dated 28.01.2016 in I.A.No.726 of 2014 in O.S.No.69 of 2010 on the file of Family Court-cum-VI-Additional District Judge, Kadapa, is legal, proper and correct?

Point:

7. The suit in O.S.No.69 of 2010 was filed against sole defendant for the relief of specific performance of an agreement of sale dated 26.04.2010 and plaintiffs prayed for the following relief under para 12 (a), which reads as under:

"Directing the defendants to execute the registered sale deed in favour of the plaintiff in respect of the plaint schedule property by rectifying S.No., within the time stipulated by the Hon"ble Court after receipt of balance of sale consideration from the plaintiffs and if the defendants fail to comply the same, the Hon"ble Court be pleased to execute proper registered sale deed in favour of the plaintiffs on behalf of the defendants through process of law"

8. Revision petitioners herein filed the above referred application stating that sole defendant-Rajay Lakshmi died on 07.05.2011 during pendency of the suit and that defendant Nos.2 to 6 were brought on record as legal representatives of deceased Rajay Lakshmi as per orders in I.A.No.140 of 2011 dated 11.10.2011 and that deceased 1st defendant filed a detailed written statement with true and correct facts and they are continuing the proceedings left by deceased 1st defendant. But, as the above referred relief is misleading and the scope of the suit for the main relief is very much unavailable to the plaintiffs and out of the purview of the sale agreement dated 26.04.2010 and by introducing such rider for rectification of survey number the malafides of plaintiffs are traversed beyond scope of the agreement, therefore, the additional issues have to be framed. Admittedly, even according to own affidavit of revision petitioners, a detailed written statement is filed by deceased Rajya Lakshmi and they contend that deceased filed such written statement with true and correct facts and they want to continue the proceedings left by 1st defendant. The above referred relief at para 12(a) is not a new introduction, it was part and parcel of plaint, for which 1st defendant filed a detailed written statement as answer. Admittedly, no objection was raised in the written statement filed by deceased Rajya Lakshmi for the above referred prayer. So also the newly added defendant Nos.2 to 6

have not filed any additional written statement subsequent to their impleading on the death of 1st defendant. Order XIV C.P.C. contemplates framing of issues. When a particular fact or law is affirmed by one party and denied by the other party, necessary issues have to be framed to determine such fact or law affirmed and denied. It is also open to the party, if any fact affirmed and denied is not framed as an issue for determination to request the Court to frame additional issue. Here, it is not like that. The deceased 1st defendant has not raised any objection with regard to prayer under para 12(a), which is mainly now focused by the newly added defendant Nos.2 to 6 to support their contention that some additional issues are necessary for determination.

9. Advocate for revision petitioners placed reliance on judgment of this Court in Apollo Health and Lifestyle Limited and another v. Anupam Saraogi, 2015 (2) ALT 550 (DB), wherein Division Bench of this Court held while framing the issues, the learned Judge to bear in mind the allegations made on oath by the parties, or by any persons present on their behalf, or made by the pleaders of such parties and the allegations made in the pleadings or in answers to interrogatories delivered in the suit and the contents of the documents produced by their party. Learned Advocate also relied on decision of this Court in Yerragogu Mruthyunjaya Rao v. Marni Kumara Veeraswamy and others, 2012 (6) ALT 353, wherein this Court held that an issue arises where a particular fact or proposition of law is asserted by one party and denied by the other, the primary object of framing issues is to ascertain the controversy and rival contentions between the parties. He also referred to judgment of this Court in Tadishetty Padma Rao and another v. Tadishetty Jaihind and others, 2012 (4) ALT 6, wherein this Court held that under Order XIV Rule 1 of the Code, issues arise when a material proposition of fact or law is affirmed by one party and denied by the other. In all the above three decisions, the principle laid down is when a fact or law is affirmed by one party and denied by another party, the Court is bound to frame an issue to ascertain the controversy and rival contentions between the parties. The above principle is not disputed by other side. But, what is to be seen is whether that principle is applicable to the case on hand. Here, admittedly no objection was raised in the written statement for the prayer under 12 (a), when such is the case, it is not open for defendants to contend that the Court below has not properly framed the issues. When the Court is expected to frame issues only on the facts affirmed by one party and denied by the other, the objection of the defendants that the Court has not framed any issues with regard to rectification of survey number, on the ground it is out of purview of the rights available under the sale agreement dated 26.04.2010 is not at all tenable.

10. Advocate for revision petitioners also relied on decision of this Court in Kotha Sailaja v. Thandu Yadagiri and others, 2012 (4) ALT 278, wherein this Court has considered about the power of Court for framing issues or additional issues. It is not in dispute that the Court has power to alter the issues at any time before pronouncement of judgment. But, when a party seeks for amendment of issues or recasting of issues, it is incumbent on the party to show as to how the Court

has not properly dealt the facts affirmed by one party and denied by another party while framing issues. If the Court, on consideration of evidence with reference of submissions of both parties, comes to the conclusion that a particular issue is required to answer such submissions, the Court can always alter the issues and then decide the same after giving opportunity to both parties. Therefore, all these decisions are no way helpful to the revision petitioners when no objection is raised in the written statement with regard to prayer under para 12(a) of the plaint. The Court below has rightly dismissed the application and I do not find any illegality in the order nor jurisdictional error to be interfered by this Court while exercising the revisional power.

11. For these reasons, this revision is dismissed as devoid of merits.

12. Miscellaneous petitions pending, if any, shall stand closed. No costs.