

(2006) 09 AP CK 0050

Andhra Pradesh High Court

Case No: Civil Revision Petition No. 3412 of 2005

G.V. Krishnaiah

APPELLANT

Vs

The Yemmiganur Weavers
Cooperative Society

RESPONDENT

Date of Decision: Sept. 14, 2006

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 41 Rule 25, Order 41 Rule 29, Order 41 Rule 31, 151

Citation: (2007) 1 ALD 360 : (2007) 3 ALT 379

Hon'ble Judges: L. Narasimha Reddy, J

Bench: Single Bench

Advocate: K. Somakonda Reddy, for the Appellant; P. Veera Reddy, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

L. Narasimha Reddy, J.

The respondent filed O.S. No. 473 of 2001 in the Court of the Principal Junior Civil Judge, Nandyal, against the petitioner for a decree for damages. The basis of the suit is said to be the lease deed between the parties. The suit was decreed on 8-5-2003. Aggrieved thereby, the petitioner filed A.S. No. 46 of 2003 in the Court of III Additional District Judge, Kurnool at Nandyal.

2. During the pendency of the appeal, the petitioner filed I.A. No. 702 of 2004 under Order 41, Rule 25, read with Section 151 C.P.C. with a prayer to frame two additional issues. The said application was opposed by the respondent. The lower appellate Court dismissed the I.A. through its order dated 29-6-2005. Hence the revision petition.

3. Sri K.Somakonda Reddy, learned Counsel for the petitioner, submits that the necessity for the petitioner to file the I.A. arose on account of the fact that an important factual aspect could not be dealt with by the trial Court and the framing of two additional issues would be helpful in undertaking complete and effective adjudication of the dispute. He contends that no prejudice would be caused to the respondent, in case the additional issues are framed.

4. Sri P.Veera Reddy, learned Counsel for the respondent, on the other hand, submits that the question of framing of additional issues by the lower appellate Court would arise, if only it feels that any important factual aspect had missed the consideration of the trial Court and at any rate, additional issues cannot be framed by the lower appellate Court, at the instance of the parties before it.

5. The petitioner intended that two additional issues, namely (1) Whether the lease deed dated 21-9-1999 (Ex.A.10) is properly stamped and if not whether the said document can be looked into for any purpose in this litigation? and (2) Whether the lease deed dated 21-9-1999 has to be registered and if so, whether the plaintiff can enforce the said document and base his claim to recover damages from the defendant?, be framed by the lower appellate Court. The I.A. was dismissed by observing that if the grievance of the petitioner is that the same need be addressed, issues need not be framed, and on the other hand, acceding to the request of the petitioner would warrant remand of the matter.

6. Basically, framing of issues or, for that matter, additional issues, is an exercise to be undertaken by the trial Court. The purpose of framing of issues is to enable the parties as well as the Courts, to bestow their attention on the issues so framed, touching on the important aspects of the controversy. Evidence is also adduced with reference to the issues.

7. By the time the matter reaches the appellate Court, the nature of the controversy between the parties undergoes substantial change, in most of the cases. In the appeals, the purport of the dispute may remain the same as it existed before the suit, if the suit was dismissed, and it may vary if the suit was partly decreed or dismissed as a whole. It is for this reason, the appellate Court is not placed under obligation to repeat the same exercise, as undertaken by the trial Court with reference to the issues framed in the suit. The appellate Court is required to frame the points under Rule 31 of Order 41 for determination. Depending on the nature of the subsisting controversy, the points may, in some cases, be the replica of the issues or the summarized version of the surviving controversy.

8. The exceptional circumstances under which the appellate Court can frame additional issues are provided under Rule 25 of Order 41. The said provision reads as under.

25. Where Appellate Court may frame issues and refer them for trial to Court whose decree appealed from - Where the Court from whose decree the appeal is preferred

has omitted to frame or try any issue, or to determine any question of fact, which appears to the Appellate Court essential to the right decision of the suit upon the merits, the Appellate Court may, if necessary, frame issues, and refer the same for trial to the Court from whose decree the appeal is preferred, and in such case shall direct such Court to take the additional evidence required;

and such Court shall proceed to try such issues, and shall return the evidence to the Appellate Court together with its findings thereon and the reasons therefore [within such time as may be fixed by the Appellate Court or extended by it from time to time].

9. A perusal of the same discloses that the necessity to frame additional issue would arise for the appellate Court only when it comes to the conclusion that the trial Court had omitted to frame or try an issue or to determine any question of fact, which was essential for the decision in the suit, on merits. By and large, it is an exercise to be undertaken by the appellate Court on its own accord, than at the instance of the parties. The parties cannot be said to be vested with any right to insist that the lower appellate Court must frame the issues.

10. Even where the lower appellate Court receives additional evidence, the requirement of Rule 29 of Order 41 is to specify the relevant point, touching upon the additional evidence and not the framing of issues or the additional issues. Viewed from any angle, there does not exist any basis, for the application filed by the petitioner, for framing additional issues at the stage of appeal.

11. In fairness to the petitioner, the learned appellate Judge indicated that the points urged by the petitioner can certainly be taken into account, at the time of hearing, and obviously, he indicated that they would be dealt with under relevant points. The order under revision does not suffer from any legal or factual infirmity, particularly when the learned Judge himself permitted the petitioner to address the Court, on aspects covered by the proposed additional issues, at the time of hearing.

12. The Civil Revision Petition is accordingly dismissed. However, to avoid any uncertainty, it is made clear that the petitioner shall be entitled to urge these contentions at the time of hearing of the appeal. There shall be no order as to costs.