IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No.4644 of 2015 (O&M)
Date of decision: 24.07.2015

Suresh Chander Vatsyayan (since deceased, through his LRs).
... Petitioner

versus

Umesh Chander Sharma and others .... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Akshay Bhan, Senior Advocate,
with Mr. Namit Gautam and Mr. Vaibhav Sehgal,
Advocates, for the petitioner.

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1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ?No.
3. Whether the judgment should be reported in the digest ?No.

K.Kannan, J. *(Oral)*

1. Revision is against an order passed by the court below rejecting issue No.1 that was framed with reference to whether one Ram Kishan under whom the plaintiff claimed a right under an agreement and sought for its enforcement, had ownership to the property or not. The application for review of that order has been filed by the 10th defendant and the court has dismissed the application for review and has persisted with an order already passed striking off issue No.1 by the same order. It appears that the trial

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court struck several other issues and the plaintiff had brought the matter for revision before this court in Civil Revision No.3505 of 2013. I had sustained the order with reference to some other issues and modified a particular issue No.7 suo motu placing the burden of proof on the plaintiff with reference to the agreement which the plaintiff was propounding. The decision made no reference to striking down of issue No.1 since the 10th defendant had not come on revision but had adopted the procedure of approaching the trial court itself for review of its decision.

2. While dismissing the review application, the court has made reference to the order passed by this court in Civil Revision No.3505 of 2013 and has held that since this court has modified the issues, it was not possible to undertake a review of the decision already taken.

3. I must point out to a clear error of the court below in assuming that the striking out issue No.1 was never a point of issue before this court. I had not adverted to issue No.1 because the 10th defendant had not earlier approached this court at the time the application was still pending before the court and it was, therefore, bound to see whether the striking off the issue No.1 was appropriate. The learned senior counsel for the petitioner points out that the issue No.1 regarding ownership of Ram Kishan becomes necessary in view of the specific defence taken at para No.2 that reads as

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follows:-

> "Para No.2 of the plaint is wrong and denied. It is denied that late Pt. Ram Kishan alias Ram Krishan was the owner of house bearing no.180-L/180-R measuring 618 sq. yards, as shown red in the site plan, situated at Model Town, Ludhiana. It is not denied that said house in dispute was allotted to late Pt. Ram Kishan alias Ram Krishan by the Deputy Commissioner, Ludhiana,but it is denied that he was paying installments to the Deputy Commissioner."

There is a sure denial of Ram Kishan's ownership but it is only not denied that the property was allotted to him. An allotment that still does not take a shape of a transfer through a registered instrument will make possible a defence that the ownership did not reside with Ram Kishan. If the court has, therefore, framed an issue already of ownership of Ram Kishan, it should have been persisted and could not have struck down the issue. After all the suit for specific performance is under an alleged agreement of sale from Ram Kishan and the 10th defendant claims that he paid the installments due and secured to himself the allotment. The issue which was framed could not have been deleted in the manner that it was.

4. I thought for a while whether notice would require to be sent to the respondents, for, framing of issues is essentially the

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court's business. It is to secure appropriate focus for the points for consideration for an adjudication and help the parties to lead evidence on the basis of issues framed. If there is an error in framing the issue, then it is bound to be corrected at any time and it does not require consent of parties. If issues are framed what the court does is to secure appropriate assistance of the respective parties to ensure that there is no issue that is in error or that is omitted. I have examined the pleadings and I cannot find any scope for any of the defendants to have an objection to this court deciding on what is appropriate issue for consideration. The impugned orders are set aside and the issue No.1 is directed to be restored and the case will proceed in the manner that was already set down in accordance with law.

5. Civil revision is allowed on the above terms.

(K.KANNAN)
JUDGE

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