

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 5893 of 2014 (O&M)

Date of Decision: 12.02.2016

Rajinder Singh Dhillon

... Petitioner(s)

Versus

Major Gian Singh Charitable Education Trust Dakha and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

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| 1. | Whether reporters of local newspapers may be allowed to see judgment? | Yes |
| 2 | To be referred to reporters or not? | |
| 3 | Whether the judgment should be reported in the Digest? | Yes |

Present: Mr. Akshay Bhan, Senior Advocate
with Mr. Santosh Sharma, Advocate
for the petitioner(s).

Mr. Sunil Chadha, Senior Advocate
with Mr. Chetan Bansal, Advocate
for the respondent(s).

Shekher Dhawan, J.

Present petition is challenge to the order dated 26.8.2014, passed by learned Civil Judge (Junior Division), Chandigarh, whereby the trial Court ordered to frame additional issues in the civil suit.

Relevant facts of the case that plaintiffs-Major Gian Singh Charitable Education Trust, Dakha and others have filed suit for declaration to the effect that the *ex parte* judgment & decree dated

12.12.2007 was obtained by fraud, concealment of facts and by setting up a false Will etc. and for setting aside the same.

Learned counsel for the petitioner submitted that matter remained pending for about eight years and both the parties had already concluded their evidence on 31.7.2014. Parties were well aware of the pleadings and the following issues were framed by the Court below:-

- "i) *Whether the ex parte judgment and decree dated 12.12.2007 passed by the Court of Sh. Ram Kumar Singla, Civil Judge (Junior Division), Chandigarh was obtained by fraud and misrepresentation and the same is liable to be set aside and the plaintiff No.1 is owner of Kothi No. 39, Sector 9A, Chandigarh? OPP*
- ii) *If issue No.1 is proved, whether the plaintiffs are entitled for permanent injunction restraining the defendant No.1 from transferring and alienating the said Kothi in any manner whatsoever and restraining the defendant No.2 from transferring the said Kothi in the name of defendant No.1 in the official record? OPP*
- iii) *Whether the suit is not maintainable? OPD*
- iv) *Whether the suit is liable to be stayed under Section 10 of CPC? OPD*
- v) *Whether the plaintiffs have no cause of action to file the present suit? OPD*

- vi) *Whether the suit is not properly valued for the purpose of Court fee and jurisdiction and proper court fee has not been affixed? OPD*
- vii) *Relief."*

Thereafter, following additional issues were ordered to be framed:-

- "a) *Whether the suit has been filed by an authorized person? OPP*
- b) *Whether Major Gian Singh has executed Will dated 10.1.1984? OPP*
- c) *Whether Smt. Gurbachan Kaur has executed the Will dated 20.8.2002? OPD"*

The additional issues are mainly with regard to framing of issues on the point so as to challenge the Will dated 20.8.2002, which was well within the knowledge of the respondents and there was no justification or reason for framing of additional issues vide order dated 26.8.2014, thereby ordering *de novo* trial. Hence, present petition be accepted and impugned order dated 26.8.2014 be set aside. Learned counsel for the petitioner placed reliance upon judgment rendered by the coordinate Bench of this Court in ***Paramjit Kaur v. Surinder Singh 2012(2) PLR 332***, wherein a view was taken that if both the parties knew the case of each other and both the sides concluded their evidence, application for framing of additional issues at belated stage is not maintainable.

Learned counsel for the respondents submitted that law on

the point is settled that issues are to be framed by the Court on the basis of pleadings of the parties and it is because of inadvertence, the proposed issues were not framed initially by the trial Court. Although the pleadings are clear on the point that challenge in the main litigation was to the Wills dated 10.1.1984 & 20.8.2002, respectively and as such the Court below has rightly decided the application and present petition is without any merit and the same be dismissed.

Having considered the submissions made by learned counsel for the parties, this Court is of the considered view that there is no dispute on the law point that issues are to be framed by the Court on the basis of pleadings of the parties. Similar matter was before the coordinate Bench of this Court in case ***Nazar Singh v. Satnam Singh and Others 2014(5) Law Herald 4266*** and view was taken that if issues have been framed and application for framing of additional issues is before the trial Court, the same cannot be dismissed on the ground of delay alone. As per provisions of Order 14 Rule 2 CPC, it is the duty of the Court to frame appropriate issues on the pleadings of the parties. It is imperative because till such issues framed on the basis of litigation, the evidence led by the parties cannot be looked into.

While taking the pleadings of the present litigation into consideration, the proposed issues were the most relevant and essential and it is because of the inadvertence on the part of the trial Court that these issues could not be framed. Though the issues were framed in the presence of counsel for the parties and they were under legal obligation to point out additional issues also at that very point, but they had not

taken any such plea for a period of about six years. But that fact itself cannot be ground to ignore the pleadings which is the basis of litigation between the parties. It is settled law that */is* between the parties, at the stage when the matter is before the Court of first instance should be finally decided while taking into consideration all the pleas available with the parties and the material and evidence in support of that. The said process may take some time.

While coming to the conclusion that additional issues are essential being arising out of basic pleadings of the parties, needless to mention that the Court below rightly took a view that additional issues should be framed and there is absolutely no illegality in the order under challenge. But as the civil suit pertains to the year 2008, directions are being issued that the trial Court shall expeditiously dispose of the matter by giving minimum number of adjournments to both the parties with short interval only.

With the observations made above, present petition is dismissed.

(Shekher Dhawan)
Judge

February 12, 2016

"DK"