

\$~A-41

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CM(M) 796/2016

DAL CHAND

..... Petitioner

Through Mr.R.K.Sharma, Adv.

versus

CHARAN SINGH SHARMA & ORS

..... Respondent

Through None

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

%

19.08.2016

1. Advance copy of this petition has been served on defendant no.1 by Speed Post. None is present for defendant No.1.
2. By the present petition the petitioner seeks to impugn the order dated 12.5.2016. By the said order, the trial court framed issues and rejected the contention of the learned counsel for the petitioner that issues No.3,4,5 and 7 as framed be treated as preliminary issue inasmuch as it would not require any evidence.
3. Learned counsel appearing for the petitioner submits that said issues, namely, 3, 4, 5 and 7 are mere questions of law and would not require evidence and the trial court has erroneously not considered the aforesaid aspect while rejecting the plea of the petitioner, He also submits that the petitioner has pressed for framing of one issue, namely, "Whether the suit is barred by principal of res judicata? OPD" He submits that this plea has been taken in the written statement and would arise for consideration of the court

and yet the trial court has not taken into account this issue when a specific request was made. The list of suggested issue had been filed before the trial court.

4. As far as the first question of framing of preliminary issues are concerned, Order XIV Rule 2(2) provides that where a court is of the opinion that any suit can be disposed of on an issue of law only it may try that issue first if it relates to (a) jurisdiction of the court or (b) a bar to the suit created by any law for the time being in force.

5. A perusal of the impugned order shows that the trial court has declined to frame preliminary issues without recording a finding under Order XIV Rule 2(2) namely as to whether the issue can be disposed of as an issue of law only. Accordingly, the said finding recorded by the trial court declining to frame preliminary issues is set aside. Liberty is granted to the petitioner to move the trial court for framing of preliminary issues. In case such an application is filed trial court may take a decision as per law keeping in view Order XIV Rule 2(2) CPC.

6. As far as the other contention of the petitioner is concerned regarding framing of an additional issue the petitioner is granted liberty to move an appropriate application under Order XIV Rule 5 CPC for framing of additional issues before the trial court.

7. Petition is disposed of in the above terms. All pending applications, if any, also stand disposed of.

8. Dasti.

JAYANT NATH, J

AUGUST 19, 2016

N