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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**Civil Revision No.195 of 2019 (O&M)
Date of Decision: 05.12.2019**

Raj Rani and others

.....Petitioners

Vs

Bimla Devi

....Respondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. J.K. Chauhan, Advocate
for the petitioners.

Mr. Brijender Kaushik, Advocate
for the respondent.

RAJ MOHAN SINGH, J.

[1]. Petitioners have laid challenge to the order dated 27.11.2018 passed by the Civil Judge (Junior Division) Panchkula, vide which the application filed by the petitioners for framing of additional issues was dismissed.

[2]. Brief facts are that plaintiff/respondent filed a suit for declaration to the effect that judgment and decree dated 16.12.1993 passed in Civil Suit No.446/1993 titled 'Sant Ram vs. Ram Chander' in respect of 266 Kanals 19 Marlas of land as shown in the headnote of the plaint and consequent mutation No.363 dated 15.06.1998 is illegal. Permanent injunction was

also sought for restraining the defendants from alienating, transferring, mortgaging, subletting or creating any encumbrance over the suit property. Para Nos.6 and 7 of the plaint are to the following effect:-

- “6. *That on further enquiry the plaintiffs came to know that Sh. Sant Ram by playing fraud upon Sh. Ram Chander, got manipulated false and forged judgment & decree dated 19-12-1993 in his faovur from the name of Sh. Ram Chander and further by playing fraud got passed an Award dated 5-10-2009 in the name of the defendants from the name of late Sh. Sant Ram, though there was no reason, necessity or occasion for Sh. Ram Chander s/o Sh. Radha Ram and further to Sh. Sant Ram to suffer any decree in favour of Sh. Sant Ram husband of defendant No.1 and father of the defendants No.2 to 4. And further came to know that the defendant No.1, 3 & with a malafide intention and ulterior motives transferred the property measuring 180 kanals 11 marlas in favour of the defendant No.2 through registered Release Deed No.3972 dated 21-2-2011 and land measuring 19 kanals 13 marlas through registered Release Deed No.151 dated 16-4-2012 and mutations to that effect were also sanctioned vide mutations No.479 dated 31-3-2011 and mutation No.494 dated 14-5-2012 respectively. Moreover, Sh. Ram Chander had always good relations with the plaintiff. It has been further revealed after enquiry that Sh. Sant Ram also got the mutations sanctioned in his favour on the*

basis of the above said forged and fabricated decrees of the land and further the defendants also got the mutations sanctioned in their favour of inheritance of Sh. Sant Ram as well as on the basis of alleged Award dated 5-10-2009.

7. *That the land in dispute as fully detailed in the heading of the plaint is ancestral and joint Hindu family property qua the plaintiff and Sh. Sant Ram."*

[3]. In the relief clause, the plaintiff sought that the decree dated 16.12.1993 passed in Civil Suit No.446/1993, consequent mutation No.363 dated 15.06.1998, Award dated 05.10.2009 passed in Civil Suit No.317/CS dated 08.09.2009 by the Permanent Lok Adalat, Panchkula, Mutation No.477 dated 14.02.2011, Release Deed No.3972 dated 21.02.2011, consequent Mutation No.479 dated 31.03.2011, Release Deed No.151 dated 16.04.2012, consequent Mutation No.494 dated 14.05.2012 and other consequential alienations and transfers on the basis of Award and judgment and decrees were claimed to be null and the void and the decree was claimed to be fraudulent and was obtained by misrepresentation and undue influence practised by Sant Ram son of Ram Chander upon late Sh. Ram Chander son of Sh. Radha Ram in order to defeat the rights of the plaintiff which was claimed to be 'joint Hindu family property'.

[4]. In the suit, the trial Court framed the issues on

08.05.2015 to the following effect:

- “1. *Whether the plaintiff is entitled to a decree for declaration to the effect that the judgment and decree dated 16.12.1993 passed in civil suit No.446/1993 titled as 'Sant Ram vs. Ram Chander' and the award dated 05.10.2009 passed in case No.317/CS dated 08.09.2009 by the Permanent Lok Adalat, Panchkula, in case titled "Harish Kumar vs. Sant Ram & Ors.'" and mutation No.477 sanctioned on 14.02.2011 are illegal, null and void? OPP*
2. *Whether the plaintiff is entitled to relief of permanent injunction restraining the defendants from alienating, mortgaging, transferring or creating any sort of charge over the suit property? OPP*
3. *Whether the suit of the plaintiff is not maintainable in the present form? OPD*
4. *Whether the plaintiff has come to this court with clean hands? OPD*
5. *Relief.”*

[5]. After amendment of the plaint, the trial Court again framed the issues on 21.01.2017 to the following effect:-

- “1. *Whether the plaintiff is entitled to relief of declaration as prayed for under the amended plaintiff? OPP*
2. *Whether the plaintiff is entitled to relief of permanent injunction restraining the defendants from alienating, mortgaging, transferring or creating any sort of charge over the suit property?*

OPP

3. *Whether the suit of the plaintiff not maintainable in the present form? OPD*
4. *Whether the plaintiff ha no come to this court with clean hands? OPD*
 - 4A) *Whether the suit of the plaintiff is time barred? OPD*
 - 4B) *Whether the plaintiff has no locus standi to file the present suit?OPD*
5. *Relief.”*

[6]. Evidently, no issue of fraud was framed by the trial Court, despite the fact that the suit was filed challenging judgment and decree dated 16.12.1993 and Award dated 05.10.2009 passed by the Permanent Lok Adalat on the basis of fraud, misrepresentation and undue influence. The plaintiff has specifically pleaded in para No.13 of the plaint that Ram Chander never appeared in the Court, nor engaged any lawyer or gave any statement and never suffered any decree. This fact has been denied by the defendants in the written statement. No issue was framed on this point by the trial Court.

[7]. Similarly, the defendants have taken objection in para No.10 of the preliminary objection in the written statement that the civil Court has no jurisdiction to entertain the suit in respect of award passed by the Permanent Lok Adalat, but no issue was framed by the trial Court on this aspect. Issues No.1 and 2

framed by the trial Court on 21.01.2017 are in the context of relief claimed by the plaintiff, whereas the issues ought to have been framed on the basis of pleadings of the parties. Both the parties have concluded their evidence. Defendants/petitioners sought framing of additional issues by way of moving an application dated 26.10.2018. The proposed issues are to the following effect:-

“2a) Whether the judgment and decree dated 16.12.1993 has been obtained by playing fraud, misrepresentation or by exercising undue influence upon Sh. Ram Chander? OPP

2b) Whether Sh. Ram Chander did not appear in the court and did not engage any lawyer and did not give any statement and never suffered any decree dated 16.12.1993? OPP

4C) Whether civil court has no jurisdiction to entertain the suit with respect to the award passed by the permanent Lok Adalat? OPD”

[8]. Learned counsel for the petitioners submitted that the plaintiff has led evidence of fraud without there being any proper issue on record. The proposed issue will facilitate the Court to decide the controversy effectively on the basis of material on record.

[9]. Learned counsel further submitted that the petitioners/defendants would not lead any evidence and the plaintiff has already led evidence in support of her claim in the

suit. Framing of proposed issue would cover the entire controversy including the plea of fraud, misrepresentation and jurisdiction of the Court to entertain the suit in respect of the Award passed by the Permanent Lok Adalat.

[10]. Learned counsel further submitted that framing of additional issues can be done at any stage before passing of the decree, if the same is necessary for determination of the real controversy between the parties. By relying upon **Surjit Singh vs. Jai Parkash Singh Bedi, 1992(2) R.R.R. 547**

learned counsel submitted that Order 14 Rule 5 CPC empowers the Court to amend and strike out issues at any time before passing of decree, if such amendments or additional issues as the case may be are necessary for determining the matter in controversy between the parties. If indulgence is granted on that aspect that will not call for any interference.

[11]. By relying upon **Smt. Krishna Kanwar and others vs. Satya Pal Singh Chauhan (since deceased) through his LRs and others, 2016(3) R.C.R. (Civil) 985**, learned counsel further submitted that on the basis of pleadings of the parties, it was obligatory on the part of the Court to frame a specific issue. It is the duty of the Court to frame proper issue on all the points raised in the pleadings, even if a party could not press for an issue at the initial stage, that party is not precluded from framing

of additional issues at a later stage. Reference has also been made to **Rajinder Tandon vs. Thomas Nasir Masih, 1999(1) R.C.R. (Civil) 539**, wherein it was held that it is the duty of the Court to frame issues and the same should be framed correctly after taking note of the controversy between the parties and the pleadings made by the parties.

[12]. At last learned counsel submitted that all necessary issues should be framed which arise from the pleadings of the parties. If a party on earlier occasion not claimed the additional issue, that will not debar him/her from approaching the Court from framing of additional issue. In **Hari Chand vs. Krishan Kumar, 1998(3) R.C.R. (Civil) 186**, this Court further emphasized that the delay itself is not the sole criteria for declining prayer for framing of additional issue and the prayer cannot be declined on the ground that the plaintiff has already led his evidence.

[13]. On the other hand, learned counsel for the respondent vehemently contested the revision petition on the ground that issue No.1 as framed on 08.05.2015 and 21.01.2017 would answer the entire controversy. The issue No.1 involves declaratory relief which would cover all the pleas including the scope of additional issues. Learned counsel further submitted that when the parties knew case of each other, framing of issue

is not at all required.

[14]. After hearing learned counsel for the parties, I am of the view that keeping in view the pleadings of the plaintiff in para nos.6, 7, 10 & 13 and the stand taken by the defendants in the written statement, framing of issues in respect of fraud, misrepresentation and undue influence and jurisdiction of the Court are necessary. Even if, the plaintiff has already led her evidence, the same has to be tested on the basis of specific issue. By doing so, the Court would be dealing with the specific issue with reference to specific evidence brought on record by the parties.

[15]. As regards submissions made by learned counsel for the petitioners that the petitioners/defendants would not lead any evidence on record and it is for the plaintiff, who has laid challenge to the civil Court decrees, Award of the Permanent Lok Adalat and consequent mutations, therefore, the plaintiff needs to establish her case with the help of precise evidence on a particular issue.

[16]. Keeping in view the nature of proposed issue, I am of the view that nature of the suit would not be changed in any manner in view of the fact that the original issues were framed on 08.05.2015. Thereafter amendment of the plaint was allowed and the issues were again re-framed on 21.01.2017. On

both the occasions, main issues were in respect of entitlement of the plaintiff in respect of declaration and permanent injunction. The trial Court did not adhere to the pleadings of the parties, wherein civil Court decree and Award of the Permanent Lok Adalat were assailed on the ground of fraud, misrepresentation and undue influence. The proposed issues are in respect of fraud, misrepresentation and undue influence committed by Sant Ram upon his father Ram Chander while obtaining the civil Court decree and Award of the Permanent Lok Adalat.

[17]. In my considered opinion, the proposed issues would go in a long way to facilitate the Court in arriving at just decision. The trial Court will also be in a proper position to appreciate the initial onus of the proposed issues to be discharged by the party in accordance with law.

[18]. For the reasons recorded hereinabove, I deem it appropriate to accept this revision petition. Consequently, the impugned order dated 27.11.2018 passed by the Civil Judge (Junior Division) Panchkula is set aside. Normal consequences to follow.

December 05, 2019

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No