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

**Civil Revision No.7078 of 2018  
Date of Decision: 10.07.2019**

**Apeejay School, Charkhi Dadri and others  
.....Petitioners**

**Vs**

**Sh. Ravidas Seva Ashram Charkhi Dadri and another  
....Respondents**

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

Present: Mr. H.L. Tikku, Sr. Advocate with  
Mr. Sumeet Goel, Advocate and  
Ms. Yashmeet Kaur, Advocate  
for the petitioners.

Mr. Raman Chawla, Advocate  
for respondent No.1.

Mr. S.K. Sharma, Advocate for  
Mr. B.R. Gupta, Advocate  
for respondent No.2.

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**RAJ MOHAN SINGH, J.**

[1]. Petitioners have preferred this revision petition against the orders dated 14.09.2018 and 03.10.2018 passed by the Addl. Civil Judge (Sr. Divn.) Charkhi Dadri, vide which the proposed issues were conversely framed thereby putting negative onus on the defendants and the application for review of order dated 14.09.2018 was dismissed.

[2]. Perusal of the record would show that petitioners filed an application under Order 14 Rule 5 read with Section 151 CPC for framing of additional issues. It was pleaded by defendants No.1 and 3 in the written statement that the plaintiff has no legal status to institute the suit and the plaint has not been signed and verified by the duly authorized person. Zile Singh does not have any authority to verify and sign the plaint on behalf of the plaintiff. Zile Singh being the acting President was denied by the defendants. Authorization in favour of Zile Singh was also denied. Petitioners sought to get the following issues framed:-

- “1. Whether the plaintiff is a legal entity and has any legal status to institute the present suit.? OPP
2. Whether the plaint is signed and verified by and suit is instituted by a duly authorized person? OPP”

[3]. The application was contested by the plaintiff. The trial Court vide order dated 14.09.2018 observed that both the proposed issues are required to be framed for just and proper adjudication of the suit, but at the same time put the burden to prove the issues on the defendants. Following additional issues No.7A and 7B were framed:-

- “7A. Whether plaintiff is not having legal status and locus standi to institute the present suit? OPD
- 7B. Whether Shri Zile Singh is not duly authorized to sign and verify the plaint? OPD”

[4]. Perusal of the aforesaid issues would show that the burden has been put upon the defendants to prove the issues in negative. Plaintiff has to prove his *locus standi* and legal status to institute the suit. Authorization to file the suit has to be demonstrated by him with reference to the evidence. It was the case of the defendants/petitioners that the suit was not instituted by the authorized person, nor the plaint was verified and signed by the authorized person. Zile Singh had no authority to verify and sign the plaint for want of delegation of authority by the plaintiff-Ashram. On the aforesaid premise, the plaintiff was obligated to show that the suit was filed by an authorized person and the pleadings have been signed and verified by the authorized person. These are the basic requirement for allowing the suit to proceed. It is a settled principle of law that burden to prove a relevant fact is always on the person, who asserts in affirmative.

[5]. In **Subhash Chander and others vs. M/s Active Promoters Pvt. Ltd., 2015(1) RCR (Civil) 62**, it was held that a person, who claims some right on the basis of some document is required to positively prove the same to be genuine. In **Thiruvengada Pillai vs. Navaneethammal and another, 2008 (2) RCR (Civil) 262** the Hon'ble Apex Court held that when the execution of an unregistered document produced by the plaintiff

was denied by the defendant, then asking the defendant to establish the document to be forged was not a sound proposition. In the said case, the Courts below proceeded on the basis that it is for the party, who asserts something, to prove that thing; and as the defendant alleged that the agreement was forged, therefore, it was for him to prove it. The Hon'ble Apex Court held that the Courts below had lost sight of the fact that the party who propounds the document will have to prove it. In the said case, it was the plaintiff who had come to the Court alleging that the defendant had executed an agreement to sell in his favour. Defendant therein denied the same. The burden was on the plaintiff to prove that the defendant had executed the agreement and not on the defendant to prove the negative.

[6]. In **Pritam Singh vs. Raj Kumar, 2013(4) R.C.R. (Civil) 126** and **K. Laxmanan vs. Thekkayil Padmini and others, 2009(1) R.C.R. (Civil) 388**, the Hon'ble Apex has held that when there are suspicious circumstances in the execution of Will, the onus is on the propounder to explain them to the satisfaction of the Court. It is only after such discharge of responsibilities, the Court would accept the Will as a genuine document. Para No.7 of the **Pritam Singh's** case (supra) reads as under:-

*"7. The test of how a burden is discharged is brought through Section 102 of the Evidence Act, as follows:-*

*"102. On whom burden of proof lies.- The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side."*

*The test shall be as to what is to happen if no evidence is given on either side and that is how the burden is to be seen. A person, who was relying therefore that there was a valid service of notice, and yet another person contending that he was not served at all and that he never refused, if both the parties did not give any evidence, it would have only resulted in a finding that there was no service. The burden, in this case, must therefore be on the person, who affirmed that there was a valid service which was refused and it will be an untenable argument to make that the defendant must put the court bailiff in witness-box as his witness to deny that he did not serve the summons and that the defendant did not refuse to receive the same. It will be inverting a legal logic to levels which the statute does not provide for. I will, therefore, reject the argument that there had been any valid service of notice."*

[7]. In terms of Section 102 of the Evidence Act, the burden of proof in a suit or proceeding shall lie on that person who would fail if no evidence at all were given on either side. In the cited case of **Pritam Singh** (supra), there was a dispute regarding valid service which was denied by the opposite party. If both the parties did not give any evidence, it would have only resulted in a finding that there was no service. The burden, in that case, must therefore be on the person, who affirmed that there was a valid service which was refused and it was held that

defendant was not required to put the Court Bailiff in witness-box as his witness to deny that he did not serve the summons and that the defendant did not refuse to receive the same. In that eventuality, it will be inverting a legal logic to levels which the statute does not provide for. The Court in the aforesaid proposition, rejected the arguments of valid service propounded by the plaintiff as against the defendant who had denied the same.

[8]. Sections 101 and 102 of the Evidence Act would assume importance in the present context. Section 101 of the Evidence Act provides for initial burden of proof. Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person. If a person desires a Court to give judgment that another person be punished for a crime, then the first person must prove that the second person has committed the crime. Section 102 of the Evidence Act deals with the proposition on whom burden of proof lies. The initial onus is always on the plaintiff and if he discharges that onus and makes out a case which entitles him to a relief, the onus shifts to the defendant to prove those circumstances, if any, which would

disentitle the plaintiff to the same. The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

[9]. In **Anil Rishi vs. Gurbaksh Singh, 2006(3) RCR (Civil) 347**, the Hon'ble Apex Court has held that the initial burden of proof would be on the plaintiff in view of Section 101 of the Evidence Act. A distinction exists between a burden of proof and onus of proof. The right to begin follows onus probandi. It assumes importance in the early stage of a case. The question of onus of proof has greater force, where the question is which party is to begin. The elementary Rule in terms of Section 101 of the Act is inflexible. In terms of Section 102 of the Act, the initial onus is always on the plaintiff and if plaintiff discharges that onus and makes out a case which entitles him to a relief, the onus shifts to the defendant to prove those circumstances, if any, which would disentitle the plaintiff to the relief.

[10]. In **Bajaj Auto Ltd. vs. TVS Motor Company Ltd. (Madras High Court), 2010(36) RCR (Civil) 447**, it was held that burden of proof generally lies on a party who asserts a particular fact. In other words, it would be on a party whose suit would fail, if no evidence was led. Onus of proof by a party would cease when the opposite party admits the transaction.

Burden of proof on the pleadings of a party, never shifts to the other party. The initial burden of proving a particular fact is always on the party who asserts the same in affirmative. When he produces evidence in support of his statement, onus would shift to the opposite party to adduce evidence in rebuttal to meet the case made out by the other party. In civil cases, onus of proof is never fixed permanently, but it keeps on fluctuating very frequently.

[11]. In the instant case, the desirability to frame issues in terms of Order 14 Rule 5 CPC has not been denied, but while framing issues onus was conversely placed. The onus i.e. burden to prove the aforesaid issues i.e. issues No.7A and 7B should have been fastened upon the plaintiff as the plaintiff has to prove the subject matter of issues and in the absence thereof the suit may fail.

[12]. The submission made by learned counsel for respondents that the consideration cannot be made at the stage of rebuttal cannot be accepted as desirability of framing of issues has not been denied in the impugned order. It is only the onus which has been conversely placed. To that extent, I am of the considered view that a legal error has crept in in the impugned order while framing issues No.7A and 7B by putting onus to prove the same on the defendants. Infact issues were

required to be framed as pleaded in para No.3 of the application under Order 14 Rule 5 read with Section 151 CPC.

[13]. For the reasons recorded hereinabove, the present revision petition is allowed. The impugned orders dated 14.09.2018 and 03.10.2018 passed by the Addl. Civil Judge (Sr. Divn.) Charkhi Dadri are hereby set aside. The application under Order 14 Rule 5 read with Section 151 CPC is allowed and the issues are ordered to be reframed in the manner as suggested in para no.3 of the said application.

July 10, 2019

*Atik*

Whether speaking/reasoned

Whether reportable

**(RAJ MOHAN SINGH)**  
**JUDGE**

Yes/No

Yes/No