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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(OS) 350/2018 & IA No.9403/2018 (u/O XXXIX R-1&2 CPC)
ANIL KUMAR Plaintiff
Through: Mr. K.K. Sharma, Adv.
Versus
DEVENDER KUMAR & ORS Defendants
Through: Mr. Ajay Kumar, Adv. for D-1&2.
Mr. Ashok K. Sagar, Adv. for D-3 to
8 & 11 to 13.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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21.05.2019

1. Though the suit is ripe for framing of issues but neither counsel has proposed any issues.
2. Time available does not permit me to peruse the pleadings, to frame the issues and especially when the plaintiff does not appear to be in any hurry to proceed with his suit.
3. The counsel for the plaintiff states, (i) that the plaintiff has instituted this suit for partition of several immovable properties, for permanent injunction restraining the defendants from alienating, encumbering or parting with possession of the said properties and for recovery of *mesne profits*; and, (ii) that issues as to the entitlement of the plaintiff to the said reliefs of partition, permanent injunction and *mesne profits* may be framed.
4. However that is as good as not framing any issues inasmuch as from the plaint on record itself it is evident that the entitlement of the plaintiff to the said reliefs is to be adjudicated. Framing such general and omnibus issues defeats the whole purpose of framing of issues.
5. The CPC, after competition of pleadings, vide Order XIV Rule 1

requires issues to be framed in the suit. Rule 1(1) of Order XIV provides that issues arise when a material proposition of fact or law is affirmed by one party and denied by the other. Rule 1(2) of Order XIV provide that material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence. Order XIV Rule 1(3) provides that each material proposition affirmed by one party and denied by the other shall form the subject of a distinct issue. Rule 1(4) provides that issues are of two kinds i.e. issues of fact and issues of law. Thereafter, Rule 1(5) requires the Court to, at the first hearing of the suit, after reading the plaint and the written statement and after hearing the parties or their pleaders, ascertain upon what material propositions of fact or law the parties are at variance and proceed to frame and record the issues on which the right decision of the case appears to depend.

6. Framing of omnibus issues with respect to the reliefs claimed, as suggested, is in violation of Order XIV Rule 1(3) which requires distinct issues to be framed on each material proposition affirmed by one party and denied by the other. Such omnibus issues also do not cull out the material propositions of fact or law on which the parties are at variance and do not tell the Court the issues on which the right decision of the case depends, as required by Rule 1(5). Framing such omnibus issues has the potential of the trial as well as the decision, going haywire.

7. Order XIV Rule 3 of CPC provides that issues may be framed either on the allegations made on oath by the parties or on the basis of allegations made in the pleadings or on the basis of contents of documents produced by either party.

8. Once issues have been framed, the Court, under Order XV Rule 3 of the CPC, has to consider whether existing undisputed evidence in the form of documents available on the record is sufficient to determine such issues and if not, to give an opportunity to the parties for production of evidence as may be necessary for decision upon such issues.

9. What falls from the aforesaid procedure is that the evidence led by the parties is to be guided by the issues framed and not by the reliefs claimed in the plaint. What further falls from the aforesaid procedure is, that the determination by the Court also has to be of the issues framed and not of the reliefs claimed in the plaint. The grant of the relief claimed in the plaint is consequential to the determination of the issues.

10. The question, who is to lead evidence first i.e. whether the plaintiff or the defendant and if there are more than one defendants, which of the defendants, also depends upon the issues framed and the onus of proof thereof. Thus, if the onus of all the issues or of the principal issue is on the defendant and not on the plaintiff, it is the defendant who will lead evidence first and not the plaintiff.

11. That the evidence to be led in the suit is to be guided by the issues and not by the pleadings becomes further clear from Order XVIII Rule 3 of the CPC which provides that where there are several issues, the burden of proving some of which lies on the other party, the party beginning may, at his option, either produce his evidence on those issues or reserve it by way of answer to the evidence produced by the other party.

12. Order XIV Rule 2 of the CPC provides that notwithstanding that a case may be disposed of on a preliminary issue, the Court shall pronounce judgment on all issues. It further provides that where issues both of law and

fact arise in the same suit and the Court is of the opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first, if that issue relates to the jurisdiction of the Court, or a bar to the suit created by any law for the time being in force. Order XX Rule 1(2) also requires the Court to in the judgment return findings on each issue. Order XX Rule 5 also provides that in suits in which issues have been framed, the Court shall state its finding or decision, with the reasons therefor, upon each separate issue.

13. Thus, not only the trial even the judgment is to be structured on the issues.

14. Supreme Court in *Makhan Lal Bangal Vs. Manas Bhunia* (2001) 2 SCC 652 held that, (i) the stage of framing the issues is an important one inasmuch as on that day the scope of the trial is determined by laying the path on which the trial shall proceed, excluding diversions and departures therefrom; (ii) the date fixed for settlement of issues is therefore a date fixed for hearing; the real dispute between the parties is determined, the area of conflict is narrowed and the concave mirror held by the Court reflecting the pleadings of the parties pinpoint into issues the disputes on which the two sides differ; (iii) the correct decision of civil lis largely depends on correct framing of issues, correctly determining the real points in controversy which need to be decided; (iv) the parties and their counsel are bound to assist the Court in the process of framing of issues; (v) duty of the counsel however does not belittle the primary obligation cast on the Court; (vi) an omission to frame proper issues may be a ground for remanding the case for retrial subject to prejudice having been shown to have resulted by the omission; (vii) if the parties are at issue on some questions of law or of fact, the suit

shall be fixed for trial, calling upon the parties to adduce evidence on issues of fact; (viii) evidence shall be confined to issues and the pleadings; (ix) no evidence on controversies, not covered by issues and the pleadings, shall normally be admitted, for each party leads evidence in support of issues, the burden of proving which lies on him; (x) the object of an issue is to tie down the evidence and arguments and decision to a particular question so that there may be no doubt on what the dispute is; (xi) the judgment, then proceeding issue-wise, would be able to tell precisely how the dispute was decided; (xii) if a material proposition of fact or law is not denied or is not specifically denied in the written statement and such tenor of the written statement persuades the Judge in forming an opinion that there was an admission by necessary implication for want of denial, no issue needs be framed and there is no need for recording of evidence on those issues; and, (xiii) valuable time of the Court would be saved from being wasted in recording evidence on such averments in pleadings as were not in issue for want of traverse.

15. This Court also, in *I.T.C. Ltd. Vs. C.L. Anand* (1995) 60 DLT 111 held that issues are framed to shorten the arena of dispute and to ascertain and pinpoint where the two sides differ so that no party to the suit is taken by surprise. It was further held that the Court should not determine an issue which does not arise on the pleadings and it is essential to the right decision of a case that appropriate issues are framed.

16. I have in *Kawal Sachdeva Vs. Madhu Bala Rana* 2013 SCC OnLine Del 1479 held that, (i) when a vague plea is taken, the Court should hesitate to frame an issue on such a vague plea unless the parties are able to give particulars in support of the plea; (ii) a bald plea unsubstantiated by any

documentary evidence is not sufficient for the purpose of framing an issue; (iii) issues are not framed on whatsoever pleas are contained in the pleadings but only on material pleadings of fact and law; (iv) a plea which has no basis in law to stand on and / or a plea qua which law is well settled cannot be said to be a material plea inviting framing of an issue thereon; and, (v) framing of an unnecessary issue invites unnecessary evidence and arguments and which protracts the disposal of suits. Reference in this regard may also be made to *Adarsh Kumar Puniyani Vs. Lajwanti Piplani* 2015 SCC OnLine Del 14022, *Abbot Healthcare Pvt. Ltd. Vs. Raj Kumar Prasad* (2018) 249 DLT 220 and *Bhavana Khanna Vs. Subir Tara Chand* 2019 SCC OnLine Del 6978.

17. If such omnibus issues, as suggested are framed, post framing of issues when parties are relegated to trial, they do not know what to prove and on what they are required to lead evidence, resulting in the parties often failing to prove or disprove what they were required to prove or disprove in support of their case and / or to defeat the case of the other. Framing such general omnibus issues also results in the Court, required vide Order XX Rule 5 of the CPC to state its finding or decision with reasons upon each separate issue, also at the time of pronouncement of judgment not knowing on what points of controversy finding or decision is required to be returned and generally rendering a decision. This often results in the parties to the lis, post judgment, realizing their follies in proving or disproving what they were required to prove and taking such grounds in appeal, often resulting in remands, for the controversy required to be adjudicated having not been adjudicated either for the default of the parties or the Court and otherwise in injustice being done owing to the crucial stage of framing of issues having

been neglected by the litigants and their counsels and as is more often than not, the case. On the contrary, if the parties and the counsels and the Court, at the stage of framing of issues bestow proper attention to the pleadings and the controversy, it often results in, either no evidence being found to be necessary or even if evidence is required to be led, being precise and concise, adducing whereof does not take much time, resulting in quicker trials and arguments with precision and early disposal of the lis.

18. I have recently in *Vifor (International) Ltd. Vs. Suven Life Sciences Ltd.* MANU/DE/0887/2019, though in the context of commercial suits but of equal relevance to other suits also, held that vagueness of such omnibus issues with respect to the relief claimed, as the counsel for the plaintiff is suggesting, permits all kinds of evidence being led instead of the issues guiding the trial, with all concerned knowing precisely what is required to be proved and non-proof whereof the consequence shall follow.

19. Thus, the counsels as well as the Court, at the stage of framing of issues, are required to peruse the pleadings and in reference to the relief claimed, cull out the essential ingredients which the plaintiff is required to prove to be entitled to that relief and to see whether the defendant is specifically denying (not vaguely denying) the same and if denying, on what facts or grounds and thereafter consider on whom the onus of proof should be. If the denial by the defendant of any material proposition of fact or law is on the basis of facts which the defendant only can prove, issue qua the said fact would be framed placing the onus thereof on the defendant. For instance, when the denial of document claimed to be a Will is on the pleas of valid execution thereof, an issue “whether the document is the validly executed last Will of the deceased” with onus on the petitioner / plaintiff has

to be framed. However, when in addition to the denial of valid execution, a defence is also taken of the deceased being incapacitated by reason of unsoundness of mind or any other ground from making a Will, in addition, an issue “whether the deceased at the time of executing the document claimed to be the Will was not in a sound state of mind” with onus on the respondent / defendant who alone can prove the unsoundness of mind or other ground pleaded for challenging the testamentary capacity can prove the same, has to be framed. Thereby the requirement of Order XIV Rule 1(3), of a distinct issue being required to be framed on each material proposition affirmed by one party and denied by the other, is fulfilled.

20. It is deemed appropriate to demonstrate the requirement vide Order XIV Rule 1 of the CPC by giving another example. Where in a suit for partition of a house belonging to a common predecessor / ancestor, the defendant does not dispute ownership of the common predecessor / ancestor, but takes the defence of the common predecessor / ancestor in his lifetime having transferred the property to the defendant, the only issue to be framed with onus on the defendant pleading so is to be, “whether the common predecessor / ancestor of the parties in his lifetime transferred the property of which partition is sought to the defendant” and no other issue is required to be framed. However while framing the said issue also the counsels and Court are required to consider whether the plea of the defendant of transfer constitutes a transfer by law. If there is a bare plea of transfer and which in law can be done only by a registered document, again no issue would arise and the plaintiff would be entitled to a decree for partition forthwith with the shares being in accordance with the law of inheritance by which the deceased was bound. Thus no issue “what are the shares of each of the

parties to the suit” is required to be framed in such a state of affairs.

21. For the sake of clarity it is deemed expedient to give another example. In a suit for recovery of balance price of goods sold, where the defendant contests the suit denying receipt of goods under a particular invoice and with respect to goods under another invoice takes the plea of rejection of the goods, the issues to be framed are, “Whether the plaintiff has supplied and delivered goods under invoice dated _____ to the defendant? OPP” and “Whether the goods sold supplied and delivered by plaintiff to defendant under invoice dated _____ were not of the ordered quality and were rejected by the defendant? OPD”. However it is generally found that the lawyers propose “Whether the plaintiff is entitled to recover Rs. _____ from the defendant? OPP”. The latter does not satisfy the test laid down in *Makhan Lal Bangal* supra.

22. Framing issues in the manner aforesaid would at all times indicate to the counsels, litigants as well as to the Court, what is for adjudication and will result in only those witnesses being examined who can prove or disprove the said disputed fact and the Court also returning finding only on that and in accordance with the said finding either pass a decree for partition if the defendant has failed to prove the issue or dismissed the suit if the defendant has proved such transfer.

23. I have spoken at length on the subject, finding in my years of practice of the profession of law, whether as a Lawyer or as a Judge, that the stage of framing of issues is the most neglected stage. The neglect results in long term mischief. Conversely, if there is an appropriate application of mind at the stage of proposing and framing of issues by all concerned, the same will go a long way in eliminating the delays for which suits are infamous.

24. The counsels are requested to on the next date of hearing propose issues in accordance with the above.

25. List on 2nd September, 2019.

RAJIV SAHAI ENDLAW, J.

MAY 21, 2019

‘bs/gsr’..