

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

**Civil Revision No.784 of 2021 (O&M)
Date of Decision: 26.03.2021**

Om Parkash (since deceased) through his LR-Raj Kumar

.....Petitioner

Versus

Santosh Kumari and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Ms. Naina Issar, Advocate for the petitioner.

MAHABIR SINGH SINDHU, J.

Present petition has been filed under Article 227 of the Constitution of India for setting aside the impugned order dated 16.02.2021, passed by learned Additional Civil Judge (Senior Division), Barnala, whereby an application of the petitioner (legal representative of Om Parkash, defendant No.1) under Order 14 Rule 5 of the Code of Civil Procedure, 1908 (*for short 'CPC'*) for making necessary correction in the additional Issue No.9-A has been rejected.

It is contended by learned Counsel for the petitioner that proposed correction will go to the root of the case, thus, learned trial Court committed a grave error of law while rejecting the application on irrelevant consideration. Further contended that ownership and possession of Ganga Bishan regarding the

property in dispute, bequeathed by him vide Will dated 29.06.1988 in favour of respondent Nos.1 to 4 & 8, cannot be properly adjudicated until and unless the necessary correction is made in the above additional Issue.

Heard learned Counsel for the petitioner and perused the paper-book.

It transpires that dispute is between the progenies of one Ganga Bishan (since deceased). Plaintiffs (respondent Nos.1 to 4), who are the daughters of said Ganga Bishan, filed Civil Suit on 21.07.2014 in the Court of learned Civil Judge (Sr. Divn.), Barnala against their brothers as well as two sisters including Om Parkash-defendant No.1 (since deceased, now through LR-Raj Kumar) for possession of the property in dispute along with staircase, measuring 16 x 30, described in head note of the plaint (P-2).

Om Parkash denied the claim of respondents by filing the written statement dated 10.04.2015 (P-3); however, the contents of para 1 & 3 of the plaint to the effect that Ganga Bishan was the owner of the property in dispute was not disputed.

Again the averments made in para 5 of the plaint about the renting out of the property in dispute along with its First Floor to one Pyare Lal during his lifetime were also not denied.

In view of the above factual position, it is apparently clear that Om Parkash neither denied the ownership of Ganga Bishan; nor about the possession of the tenant-Pyare Lal during his life time regarding the property in dispute.

It is relevant to mention here that on earlier occasion also, petitioner filed an application dated 04.02.2020 for framing of an additional Issue to the following effect:-

“ Whether the disputed property was the self acquired of Ganga Bishan? OPP”

Since respondent Nos.1 to 4 (plaintiffs) did not oppose the application and on the basis of their statements, learned trial Court, vide order dated 05.02.2020, framed the additional Issue No.9-A, which reads as under:-

“ Whether the suit property is ancestral in the hands of Ganga Bishan deceased and hence he was not competent to bequeath the same vide Will dt. 29.06.1988? OPP.”

It transpires that after framing of the above Issue, when the case was at the fag end, the present application was filed on 28.01.2021 for correction of above Issue No.9-A in the following manner:-

“Whether Ganga Bishan was owner in possession of disputed property if so its effects? OPP.”

Since from the very beginning, Om Parkash had neither disputed the ownership of Ganga Bishan; nor about possession of his tenant-Pyare Lal, thus, now asking for correction of Issue No.9-A on the ploy of ownership and possession of said Ganga Bishan is virtually taking the diametrically opposite stand to the written statement, which he cannot be permitted at such a belated stage.

Even learned trial Court has also rightly opined in para 5 of the impugned order while observing as under:-

“Now the application in question has been moved by the defendant no.1 for correcting the said issue no.9A. Perusal of the written statement filed by the defendant no.1 reveals that in his written statement, he has admitted para no.1 of the plaint to be correct meaning thereby defendant no.1 right from the beginning had not disputed the averments made by the plaintiffs to the effect that the shop in dispute and residential building was ownership of Ganga

Bishan. Thus it seems that the application in question has been moved at the fag end of the case when the case is already ripe for arguments just to delay the matter. The present suit was filed by the plaintiffs way back on 21.07.2014. The parties being well aware of their pleadings have been contesting the suit for more than 6 years. The issue no.9A as mentioned above has already been framed by the court on 05.02.2020. It is well settled law that the issues are to be framed from the pleadings of the parties. Nowhere the defendant no.1 has disputed the ownership of Bishan Dass in his written statement. Accordingly I do not find merit in the contention of the learned counsel for the defendant no.1 as the application seems to have been moved just to delay the matter. Accordingly without commenting upon the merits and effect of the statement made by the defendant no.1 in his cross-examination at this stage, I hereby dismiss the present application”.

Moreover, the onus to prove the Issue No.9-A would be on the plaintiffs/respondents and the petitioner will get a chance to raise his defence at the appropriate stage, in accordance with law.

Thus, in the opinion of this Court, filing of the present application under Order 14 Rule 5 CPC for correction of Issue No.9-A is not only misconceived; rather just to prolong the matter without there being any pleadings to that effect by above said Om Parkash.

In view of the facts and circumstances, discussed hereinabove, this Court does not find any substance to interfere with the conclusion drawn by learned trial Court while exercising jurisdiction under Article 227 of the Constitution. Consequently, there is no option except to dismiss the present petition.

Ordered accordingly.

The above observations may not be construed as an expression of

opinion on the merits of the case.

March 26th, 2021
Gagan

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No