

(1)	SAO-87-2017 (O&M)	
Krishan Kumar Khanna		...Appellant
	Versus	
Harish Kumar Khanna		...Respondent
(2)	CR-2040-2021 (O&M)	
Krishan Kumar Khanna		...Petitioner
	Versus	
Harish Kumar Khanna		...Respondent

Date of decision: 12.11.2021

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. Kanwaljit Singh, Sr. Advocate with
Mr. Harmeet Singh, Advocate for the appellant
in SAO-87-2017.

Mr. Amit Jain, Sr. Advocate with
Mr. Namit Gautam, Advocate for the petitioner
in CR-2040-2021.

Mr. Piyush Kant Jain, Advocate for the respondent.

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H.S. MADAAN, J.

1. My this order shall dispose of the aforementioned appeal and revision petition filed by appellant/petitioner Krishan Kumar Khanna against respondent Harsih Kumar Khanna.

2. Briefly stated facts of the case are that, plaintiff Harish Kumar Khanna had filed a suit for separate possession by way of partition of property unit No.B.XVII.2351A bearing Municipal No.B.XVII.2352/12A situated at Tara Peeru Banda, Jammu Colony, Backside Preet Palace Cinema, Ludhiana and for grant of permanent injunction against his real brother Krishan Kumar Khanna-defendant, contending that Smt. Parkash Wati, deceased mother of the parties had purchased a plot vide registered sale deed dated 22.08.1979, whereas, M/s International Automobiles comprising of three partners, who happened to be real brothers Sh. Sham Sunder, Harish Kumar Khanna and Krishan Kumar Khanna in equal shares had purchased a plot of the same size vide sale deed dated 23.08.1979; thereafter, construction was raised by M/s International Automobiles by obtaining loan from Punjab Financial Corporation, whereas, Smt. Parkash Wati had raised construction by spending her own funds; Sh. Sham Sunder had retired from the firm on 31.03.1983; the firm was re-constituted on 05.05.1983 and Smt. Parkash Wati was introduced as a partner, vide partnership deed dated 05.05.1983, getting one third share in the profit and loss of the firm; this position continued till 24.05.1987; Smt. Parkash Wati had executed a registered Will dated 08.04.1987 bequeathing all her moveable and immovable properties to the plaintiff and defendant in equal shares; Smt. Parkash Wati had died on 24.05.1987, whereas, firm M/s International Automobiles stood dissolved on the death of Smt.

Parkash Wati and her holding in the firm were shared by the plaintiff and the defendant equally; the property in suit was mutated in the name of plaintiff and the defendant in equal shares in the municipal record on the basis of registered Will dated 08.04.1987; in that way, one half of the total property is owned by the plaintiff and the defendant in equal shares, whereas, the remaining half is owned by the firm comprising of the plaintiff and the defendant. However, disputes and differences had arisen between the parties and the plaintiff had filed a suit for dissolution/winding up of the partnership firm and for rendition of accounts; on appearance, the defendant had filed an application under Section 8 of the Arbitration and Conciliation Act, 1996; the plaintiff had got registered an FIR against the defendant on the allegations that he had forged and fabricated a document purporting a dissolution deed dated 23.05.2002 and had used it for the purpose of cheating and as a matter of fact, the plaintiff had not signed any such dissolution deed; in that way, the plaintiff claimed $\frac{1}{2}$ share in the whole suit property by way of filing the suit in question.

3. On notice, the defendant appeared and filed written statement, contesting the suit raising various legal objections with regard to maintainability of the suit, contending that the plaintiff is not in possession of any part of the property in question, therefore, the suit for separate possession without payment of ad-valorem court fee was not maintainable; the plaintiff was estopped by his act and conduct

from filing the suit; though the plaintiff was inducted as a partner in M/s International Automobiles but he had not invested even a single penny in the business of the firm; the plaintiff and defendant had two properties, one at Gurugram and other at Karol Bagh, New Delhi; since the dispute had arisen between the parties, they agreed to refer the matter to Arbitrators, namely Sh. Tej Pal Kapoor, Sham Sunder Khanna and Sunil Khanna, vide writing dated 26.04.2002; the Arbitrators got effected two transactions one regarding $\frac{1}{2}$ share of the shop on the ground floor along with open space in the area of Naiwala, Shiva Ji Street Karol Bagh, New Delhi and on 28.05.2002, it was transferred by Harish Kumar Khanna in favour of Krishan Kumar through a sale deed; similarly, the defendant was made to execute gift deed dated 28.05.2002 in respect of remaining $\frac{1}{2}$ share in the plot No.48 at Siris Road, Gurgaon in favour of Harish Kumar Khanna-plaintiff; it was so done because the Arbitrators had decided that firm M/s International Automobiles along with land underneath and other assets would exclusively fall to the share of defendant, though a dissolution deed was prepared by the Arbitrators but the plaintiff stated that he would sign the deed only after transactions at Delhi were completed; the plaintiff had started his own separate business; the matter is still pending adjudication with the Arbitrators and they are to pronounce the award, however, the plaintiff without waiting for the award had filed the suit for dissolution of the firm.

4. According to the defendant, the suit is hit by principle of res-judicata; that he had filed a separate petition under Section 11 (6) of the Arbitration and Conciliation Act, 1996 for appointment of Arbitrator for adjudication of the dispute between the parties; the High Court, vide order dated 28.08.2002 had appointed Hon'ble Mrs. Justice Bakshish Kaur, a retired judge of the High Court as an Arbitrator, who had passed an award dated 07.09.2012, against which the plaintiff had filed objections, which remained pending in the Court of Addl. District Judge, Ludhiana; in terms of that award, all the assets of firm M/s International Automobiles came to be vested in the defendant and the plaintiff was only entitled to his capital as debit balance of more than Rs.5 lacs approx. and he was held to be in illegal possession of two vehicles of the value of Rs.4, 40,000/- approx; in the written statement, the defendant had challenged the locus standi of the plaintiff for filing of the suit, further contending that the suit was barred under Order 2 Rule 2 CPC and Order 23 Rule 1 CPC because earlier suit filed by the plaintiff stood dismissed on 19.12.2007; that the suit was bad for non-joinder of the necessary parties and no cause of action had arisen to the plaintiff to bring the suit; on merits, the assertions in the plaint were denied and pleas taken in the preliminary objections were reiterated, contending that the plaintiff has no concern with the property in dispute and he is resiling from the understanding arrived at between the parties to the suit at the instance of Arbitrators; the defendant prayed

for dismissal of the suit.

5. Plaintiff filed replication, controverting the allegations in the written statement, whereas, reiterating the averments in the plaint. For proper adjudication of the controversy between the parties, following issues were framed on 28.01.2014:-

- 1. Whether suit property i.e. plot No.BXVII-2351 was self purchased property of Parkash Wati through sale deed dated 23.08.1979. OPP?*
- 2. Whether plaintiff along defendant became owners of suit property to the extent ½ share each on the basis of Will dated 09.04.1987 executed by Parkash Wati? OPP.*
- 3. If issue No. 2 is successfully proved by the plaintiff then whether plaintiff is entitled to the decree for possession by way of partition of the suit property as prayed for ? OPP.*
- 4. Whether plaintiff is entitled to the decree for permanent injunction restraining the defendant for making alienation in the property in dispute? OPP.*
- 5. Whether this suit is legally maintainable in the present form? OPP*
- 6. What is the effect of the arbitration award dated 07.09.2012 on the present suit? OPD.*
- 7. Whether suit property was purchased in the name of Parkash Wati by defendant through spending funds of M/s International Automobiles Limited?OPD.*
- 8. If issue no. 7 is proved by defendants successfully then what is the effect of the same?OPD.*
- 9. Whether plaintiff has no concern with suit property?OPD.*
- 10.Whether brothers and sisters of plaintiff and defendant are necessary parties to suit?OPP.*
- 11.Whether suit of the plaintiff is bad for non-joinder of*

necessary party? OPD.

12. Whether the suit of the plaintiff is not properly valued for the purpose of court fee and Jurisdiction, if so its effect ? OPD.

13. What facts have been concealed by plaintiff and whether those facts are material for just decision of suit? OPD.

14. Relief.

6. The parties were afforded opportunities to lead evidence, which they did, however, issues were re-framed on 10.11.2015 by the trial Court. On 16.11.2015, the suit was dismissed.

7. Feeling aggrieved, the plaintiff had approached the Court of District Judge at Ludhiana by way of filing an appeal. Learned District Judge had remanded the case to the trial Court with a direction to provide proper opportunity to each of the party to lead evidence and thereafter decide the case afresh. This was so done, vide judgment dated 07.09.2017. The operative part of the judgment runs as follows:-

“13. After hearing Ld. Counsel for the parties, I am of the view that as per the appellant, there was no dispute of his title nor the court was required to grant any declaration or go behind the title of the appellant and the heirs of Parkash Wati never made any claim over the property in question. The appellant being co-owner of the suit property has every concern with the same. Although, Ld. Counsel for the appellant has argued that the issues framed on 10.11.2015 did not arise from the pleadings of the parties but has also stated that every party is entitled to lead evidence after framing or re-framing of issues and Ld. Trial court has violated the basic principles of natural justice.

Perusal of file of Ld. Trial court reveals that vide order dated 10.11.2015, Ld. Trial court disposed of application under section 151 CPC. It is also held that proper issues were not framed. Ld. counsel for the parties in the Ld. Trial court stated at bar that they have no objection if issues are framed afresh and they were not to lead any fresh evidence. As such, Ld. Trial court reframed issues. However, it was incumbent upon Ld. Trial court to record statements of both the parties or their respective counsel with regard to their no objection to the framing of issues and leading of no evidence after framing of issues otherwise to grant opportunity to lead evidence. But Ld. Trial court did not do so and straightway fixed the case for rebuttal evidence and on next date, rebuttal evidence was closed by order and after hearing Ld. Counsel for the parties, disposed of the suit vide impugned judgment and decree dated 16.11.2015. In this way, the parties were not afforded opportunity to lead evidence, if any, after reframing of issues on 10.11.2015. Appellant is deprived of his valuable right to prove his case on the basis of reframed issues. As such the order dated 10.11.2015 is not sustainable in the eyes of law. So without commenting on the merits of the case, this appeal is allowed and the impugned judgment and decree are hereby set aside and the case is remanded back to the Ld. trial court with the direction to provide proper opportunity to each of the party to lead their evidence and thereafter decide the case afresh. The court is free to frame or amend any issue. The parties through their counsel are directed to appear before the successor court of Sh. Ranjeev Kumar Vishisht, Addl. Civil Judge(Sr. Div.), Ludhiana on 3.10.2017 at 9.30 AM sharp. Copy of this judgment be sent to Ld. trial court along with record for strict compliance. File be consigned to the record room.”

8. The defendant feeling aggrieved by such order of remand has approached this Court by way of filing an appeal, notice of which was given to the respondent and he has come present through counsel.

9. I have heard learned counsel for the parties besides going through the record.

10. Learned District Judge, Ludhiana has remanded the case to the trial Court for the reason that after reframing of the issues, the parties ought to have been afforded opportunities to lead evidence which was not so done by the trial Court, as such, the case was sent back to the trial Court with a direction to allow the parties to lead evidence and thereafter, decide the case afresh.

11. Learned counsel for the defendant though does not dispute the fact that after framing/reframing/amendment of issues, the Court is required to give an opportunity to the parties to adduce further evidence, if they so desire but the plea raised by them is that learned counsel for the parties had in fact made statement before the trial Court that they did not want to adduce further evidence and it is so recorded in its order dated 10.11.2015 that the counsel had stated at bar that they had no objection if issues were framed afresh and they were not to lead any fresh evidence on such issues to be framed. Learned counsel for the appellant/defendant has contended that due sanctity is attached to order of the trial Court and there is no reason to doubt the same, merely, for the reason that statements of counsel were not reduced into writing and got signed from them, as has been observed by learned

District Judge, Ludhiana in his judgment. Various authorities have been cited by learned counsel for the appellant/defendant in support of his contentions i.e. Milkha Singh & Ors. Vs. Nirmal Singh & Ors., 2007(4) RCR (Civil) 842, State of Maharashtra Vs. Ramdas Shrinivas Nayak & Anr., 1982 AIR (SC) 1249, Kannan (dead) by LRs & Ors. Vs. V.S. Pandurangam (dead) by Lrs & Ors., 2008(1) RCR (Civil) 193, Major Singh & Anr. Vs. Baljit Kaur & Ors., 2016 (3) RCR (Civil) 1025 etc.

12. Learned counsel for the appellant has further argued that learned District Judge instead of remanding the case to the trial Court should have decided it himself in terms of Order 41 Rule 24 CPC and no ground for remand of the case was made.

13. On the other hand, learned counsel representing the respondent has contended that order dated 10.11.2015 was recorded by the Civil Judge in routine without knowledge of counsel for the plaintiff and there was no occasion for him to make a statement that he did not want to lead more evidence. Furthermore, he has pointed out that if such statement had been made by learned counsel for the parties, then where was the necessity of adjourning the case to 16.11.2015 for rebuttal evidence, if any and for arguments. According to learned counsel, arguments had already been addressed prior to 10.11.2015 and no effective proceeding had taken place on 10.11.2015.

14. Learned counsel for the respondent has also referred to various judgments in support of his contentions, first being

Venkataiah & Ors. Vs. Lakshmiddevamma & Ors., 2018 (1) ALT 459 to contend that if any new issue is framed, the Court is obliged to give opportunity to both the parties to adduce fresh/fresh evidence and if it is not done, prejudice is caused to the parties and the Appellate Court was justified in remanding the case. The other judgments being **Rattan Bala Vs. Krian Bala & Ors.** in CR-1632-2009 decided on 28.01.2011, i.e. **Gurmaninder Singh Vs. Jagir Singh & Ors.** in RSA-964-2012 decided on 22.04.2016, **Ranbir Singh & Ors. Vs. Tara Chand & Ors.** in RSA-1857-2006 decided on 10.07.2009 etc.

15. After hearing the rival contentions, I find that though every order passed or proceeding carried out by a judicial officer in discharge of his duties is presumed to be correct but then there are certain factors which make it doubtful as to whether counsel had in fact stated that no further evidence was to be led because if that was so, then what is the occasion for adjourning the case to 16.11.2015 for rebuttal evidence because closure of evidence by both the sides included closure in affirmative as well as rebuttal evidence.

16. Secondly, learned counsel for the respondent has drawn my attention to judgment passed by the trial Court in which date of framing of issues has been mentioned as 28.01.2014, when issues were originally framed by the trial Court on that very day, whereas, the new issues were reframed on 10.11.2015. The issues mentioned in judgment by the trial Court are those framed on 10.11.2015 and not those originally framed on 28.01.2014. In the judgment of the trial Court,

there is no mention of issues having been framed afresh on 10.11.2015. Again another factor to be seen is that in the judgment of the trial Court, it is mentioned that counsel for the plaintiff had closed the evidence of plaintiff in affirmative on 12.02.2015 whereas if he had made a statement that he did not want to lead any further evidence, then the date should have been mentioned as 10.11.2015. Similar is the position with regard to closer of evidence by defendant on 24.09.2015 when it should have been 10.11.2015. If any such statement had been suffered by learned counsel for the defendant as mentioned in the interim order of the even date in para No.8 of the judgment by the trial Court, it is mentioned that the rebuttal evidence had been closed by learned counsel for the plaintiff on 04.11.2015, whereas on 10.11.2015 itself, the trial Court had adjourned the case to 16.11.2015 for rebuttal evidence, if any and arguments. All these things are suggestive of the fact that the interim order recorded on 10.11.2015 was not as per the factual position on that date and no effective opportunity of leading further evidence, if any, was afforded to the parties after reframing of the issues, in that way, a prejudice was caused to them. The defendant has obviously been opposing the remand order since he wants the original judgment by the trial Court to remain intact in terms of which the suit of the plaintiff had been dismissed.

17. The second plea raised on behalf of the appellant that the Appellate Court could have decided the case itself, is without any merit because the case has been remanded for affording the parties

opportunities to lead further evidence after reframing of issues and not for any other reason. Therefore, situation as envisaged under Order 41 Rule 24 CPC did not arise and the Appellate Court was justified in remanding the case to the trial Court.

18. The judgments referred to by learned counsel for the appellant are not applicable due to different facts, circumstances and the context in which such observations had been.

19. Thus, as a result of detailed discussion above, I do find any merit in the appeal. The same stands dismissed accordingly.

20. Now coming to the revision petition filed by petitioner Krishan Kumar Khanna with regard to framing of issues afresh by the trial Court after remand. The grouse of the revisionist/defendant is that the first Appellate Court had not remanded the case to the trial Court for the reason of issues framed by it to be not proper and appropriate, therefore, there was no ground for reframing of issues.

21. However, learned counsel for the respondent has contended that learned District Judge while deciding the appeal and remanding the case to the trial Court has categorically observed in the concluding part of the judgment that the trial Court would be free to frame or amend any issue and further the trial Court had reframed the issues in the presence of counsel for the parties. The rival contentions on the point whether the issues were to be framed afresh were considered and then a detailed order was passed with regard to framing of issues. Learned counsel for the respondent has contended that the

present revision petition is not maintainable since the plaintiff could pray before the trial Court for framing of additional issue, deletion of any issue already framed and change of onus of proof placed upon a particular party in terms of Order 41 Rule 5 CPC. Furthermore, fresh issues were framed after hearing learned counsel for the parties and going through the record.

22. I do not find anything wrong with the impugned order framing the issues. The revision petition is without merit and is dismissed accordingly.

12.11.2021

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(H.S. MADAAN)
JUDGE

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