

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-4690-2017

Reserved on: 21.08.2023

Date of decision: 28.08.2023

UMA MEHTA

..Petitioner

Versus

RAI SAHIB MEHTA & ORS.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Veneet Sharma, Advocate
for the petitioner.

Mr. Kushagra Mahajan, Advocate
for respondents.

ANIL KSHETARPAL, J.

1. Through this revision petition, the petitioner (the plaintiff) assail the correctness of order passed by the First Appellate Court on 17.05.2017 while dismissing plaintiff's application for framing additional issues.

2. In order to comprehend the controversy involved, relevant facts in brief are required to be noticed.

3. The plaintiffs are closely related with the defendants. Defendants No.1 to 4 are the husband's brother of plaintiff No.1. Plaintiff No.2 is son of plaintiff No.1. She filed a suit for possession of 136 kanal and 6 marlas land and for recovery of mesne profits and for the declaration that the sale deed dated 07.11.2002 with regard to the land measuring 34 kanal and 1 marla in favour of defendant No.6 on the basis of power of attorney dated 10.07.1997 registered on 20.08.1997 is illegal, null and void.

4. In substance, the plaintiff claims that the power of attorney

registered on 20.08.1997 was cancelled on 16.04.1998, whereas, the sale

deed in question has been executed by defendant No.1 on the basis of her power of attorney on 07.11.2002. The defendant while contesting the suit has pleaded that there were various transactions between the parties and in fact a memorandum of settlement was executed on 03.09.2000.

5. From the pleadings of the parties, the following issues were framed on 17.04.2007:

- “1. Whether the plaintiffs are entitled to possession of the suit property? OPP*
- 2. Whether plaintiffs are entitled to recovery of mesne profit from Hari 2006 uptil date? OPP*
- 3. Whether suit is within the period of limitation? OPP*
- 4. Whether suit is not maintainable in the present form? OPD*
- 5. Whether plaintiffs have no locus standi to file the present suit? OPD*
- 6. Whether plaintiffs have no cause of action to file the present suit? OPD*
- 7. Whether plaintiffs are stopped by their own act and conduct from filing the present suit? OPD*
- 8. Whether suit is bad for purpose of mis-joinder and non-joinder of the necessary parties? OPD*
- 9. Whether suit is not properly valued for the purposes of Court fee and jurisdiction? OPD*
- 10. Relief.”*

6. Thereafter, the trial Court reframed the following issues on 23.04.2013:-

- “1. Whether the plaintiffs are entitled to relief of declaration, as prayed for? OPP*
- 2. Whether suit of the plaintiff is not maintainable? OPD*
- 3. Whether plaintiffs have got no locus standi to file the present suit? OPD*
- 4. Whether plaintiffs have no cause of action to file the present suit? OPD*
- 5. Whether suit of the plaintiffs is not properly valued for the purposes of Court fee and jurisdiction? OPD*
- 6. Whether the plaintiffs have not come to the Court with clean hands and have suppressed the material facts from this Court? OPD*
- 7. Relief.”*

7. On 25.10.2013, the following additional issues were framed by the trial Court:-

“(i) Whether the suit is bad for mis-joinder and non-joinder of the necessary parties? OPD

(ii) Whether the suit is well within the period of limitation? OPP”

8. The suit filed by the plaintiff was dismissed on 28.03.2014. The appeal filed by plaintiff No.1 in the year 2014 is pending. After a period of nearly 3 years, she filed an application for framing the additional issues, which has been dismissed by the First Appellate Court. While observing that issue No.1 framed on 17.04.2007 and additional issue bearing No.1 framed on 23.04.2013 covers all the material questions of fact involved in this case.

9. It is evident that the plaintiff prays for the following additional issues:-

“1-B Whether the power of attorney dated 10-7-1997 in favour of the defendant No.1 has been cancelled by the plaintiffs vide registered deed dated 7-4-1998 registered on 16-4-1998?

3-A Whether the defendant No.6 is a bonafide purchaser for valuable consideration without notice of defect in the title? OPD

10. On a careful reading of the judgment passed by the trial Court, it is evident that both the aspects have already been considered and the suit filed by the plaintiff has been dismissed as she failed to prove that the deed of cancellation of the general power of attorney was ever brought to the notice of defendant No.1. Thus, the trial Court has held that the sale deed executed by plaintiffs through their attorney defendant No.1 in favour of defendant No.6 is valid sale deed.

11. This Bench has heard the learned counsel representing the parties and with their able assistance perused the paperbook.

12. The learned counsel representing the petitioner while referring to Order XIV Rule 1 of the Code of Civil Procedure, 1908, contends that each material proposition of fact asserted by one party and denied by the other party is required to be culled out in a distinct and separate issue. He further submits communication of deed of cancellation dated 16.04.1998 is the pivotal issue in the case, which has not been framed and, therefore, the revision petition deserves to be allowed.

13. On the other hand, the learned counsel representing the respondents (defendants) while relying upon the judgment passed in **Piara Singh and others Vs. Bhupinder Kaur and another, 2000 (2) PLR 688**, submits that at this stage additional issues are not required to be framed particularly when both the issues have not only been discussed but decided by the trial Court.

14. The purpose of framing issues is to cull out the material propositions of fact and law, which is asserted by one party and denied by the other party. It is required that a distinct and separate issue on each material proposition of fact and law is required to be framed.

15. In this case, the First Appellate Court itself has said that issue No.1 and additional issue No.1(a) are comprehensive and the controversy involved in the case can be decided on the basis existing issues.

16. This Court has analyzed the arguments of the learned counsel representing the parties.

17. On a careful reading of the judgment, it is evident that the Court after thoroughly discussing the evidence came to the conclusion that the plaintiffs failed to send the intimation regarding cancellation of power of attorney to defendant No.1. In these circumstances, issue No.1 already framed, will take within sweep the proposed issue No.1-B.

18. As regard the next argument of the learned counsel representing the petitioner, it may be noted that issue No.1 being a comprehensive issue, already covers issue No.3(b) also.

19. The First Appellate Court in exercise of its discretion has found that there is no necessity of framing any additional issue.

20. In fact the judgment passed in Piara Singh's case (supra) also decides on the similar line.

21. It is also important to note that the application for framing additional issues was filed after nearly three years of the date of filing of the appeal. Both the parties are expected to be conscious of their case. In such circumstances, there is no likelihood of any prejudice caused to the plaintiff.

22. Keeping in view the aforesaid discussion, finding no merit, the revision petition is dismissed.

23. All the pending miscellaneous applications, if any, are also disposed of.

28th August, 2023

Ay

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned

: Yes/No

Whether reportable

: Yes/No