

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

CR-950-2017

Date of Decision: 14.02.2023

Varinder Kumar

..... Petitioner

Versus

Harbans Singh through his Legal Representatives and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Rishab Gupta, Advocate,
for the petitioner.

Mr. Sandeep Jain, Advocate, and
Mr. Sachin Jain, Advocate,
for respondent No.1.

RAJBIR SEHRAWAT, J. (ORAL)

This is a petition filed under Article 227 of the Constitution of India for setting aside the order dated 01.02.2017 (Annexure P-8) passed by the Civil Judge (Senior Division), NRI Cases, Jalandhar, vide which the application of the plaintiff for framing additional issues (Annexure P-7) has been allowed; along with certain other prayers.

Arguing the case, the learned counsel for the petitioner has submitted that the present suit was filed by the respondent-plaintiff on 26.08.2009. Thereafter, the issues were framed in the suit for the first time on 16.03.2011. Not only that; subsequently; the issues were amended twice, i.e. on 20.11.2014 and 15.07.2014, either on the basis of the amendment of the pleadings or otherwise on the request of the plaintiff. Again the new

issues have been framed by the Trial Court on asking of the plaintiff, vide impugned order dated 01.02.2017. In the meantime, the entire evidence already stood completed. Even the rebuttal evidence of the plaintiff already stood closed. Therefore, framing the issues, on this belated stage, would mean starting the trial *de novo*. Learned counsel has further submitted that, otherwise also, the exercise of framing the issues now; is totally uncalled for and irrelevant because the issue now being carved out by the Court is relating to validity of Will and the consequences thereof. Even in the issues framed at the initial stage, the issue regarding the Will was very much there. Not only that, Issues No.2 and 3 regarding the said Will and mutation consequent thereon; were already framed by the Court. The only difference now being made by the Trial Court is regarding shifting the onus of proof. Learned counsel has submitted that in the garb of framing of additional issues, the Court cannot shift the burden of proof from plaintiff to the defendant, particularly, when the Trial Court has observed that the issues earlier framed are not being struck-off even after framing of the new issues. Hence, it is submitted that the exercise undertaken by the Trial Court is not only illegal, but totally uncalled for. The order deserves to be set aside.

On the other hand, learned counsel for respondent No.1 has submitted that though earlier the issues were framed, however, the said issues pertained to defendants No.1 to 4. But the said respondents got themselves proceeded *ex parte*; after filing of the written statement. Therefore, no evidence was led on the said issues. The applicant-plaintiff became aware of this fact only after the said respondents got themselves

preceded ex parte. Hence, the issues have rightly been framed by the Trial Court.

Having heard the learned counsel for the parties, this Court finds substance in the arguments raised by the learned counsel for the petitioner. A perusal of the Issues No.3 and 4 initially framed by the Trial Court, vide order dated 16.03.2011, shows that the issue regarding the said Will and the consequences thereof were already framed by the Trial Court, though the burden of proof of the same was upon the plaintiff. Since there were already issues framed qua the Will and the consequences thereof, therefore, there was no necessity for the Trial Court to frame the issue once again. Needless to say that the Trial Court has not even struck-off the issues framed earlier. Those issues are continuing in the case even now. The only thing which is done by the Trial Court now, by framing the additional issues again, is that the burden of proof has been shifted from plaintiff to the defendants. As a result, an absurdity has crept in the proceedings. There are two sets of issues regarding the Will and its consequences. In one; the burden of proof of issue is upon the plaintiff and in other; framed now, the burden of proof have been shifted to defendants. Therefore, if the impugned order is permitted to stay, this will create an inconsistency wherein both the parties would be able to get away; by blaming the other party for not proving the facts required for decision of the suit.

Moreover, since there was already an issue framed and the burden of proof was also specified by the issue so framed, therefore, whatever be the consequences of leading or non-leading the evidence upon

the same, the Trial Court would be at liberty to draw the inference therefrom; either in favour of the plaintiff or in favour of the defendants, as per the law relating to evidence. However, even if no evidence has been led by anybody so far, that, *per se* is no ground for framing new issues at this belated stage. Needless to say that the issues are required to be framed by the trial Court only on the basis of assertions and counter-assertions made by the parties; either in their written statement or at the time of personal hearing. The evidence led in the case or omission thereon is not the relevant factor for framing of the issues as such, as required under Order 14 Rule 1 of the Code of Civil Procedure. It is not even the case of the trial Court in the order that any pleadings of the parties have now changed, which necessitated the framing of the new issues.

Although, learned counsel for respondent No.1 has submitted that the occasion for moving application to the Trial Court for framing of the additional issues, at this belated stage, arose because defendants No.1 to 4 got proceeded ex parte, however, even this assertion cannot help the respondent, for the simple reason that the said respondents had got themselves proceeded ex parte much earlier; and thereafter, the issues have been amended twice. Moreover, the burden of proof of the issue, as per the issues originally framed; was not upon those defendants, rather, the same was upon the plaintiff. Hence the said respondents getting proceeded ex parte is totally irrelevant. Viewing from many angles, this Court does not find any substance in the arguments raised by the learned counsel for respondent No.1.

In view of the above, this Court finds that the impugned order dated 01.02.2017 (Annexure P-8) passed by the Trial Court is totally non-sustainable. Hence, the same is set aside. Since, undisputedly, the suit pertains to the year 2009 and this has been sufficiently delayed, though appears to be without much justification, therefore, it is further ordered that the Trial Court shall take a final decision on the suit within a period of three months from the date of receipt of the certified copy of this order.

(RAJBIR SEHRAWAT)
JUDGE

14.02.2023
adhikari

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