

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-5784-2022 (O&M)

Date of decision: 02.06.2023

Sukhbir Singh

...Petitioner(s)

Vs.

Gaje Singh (since deceased) through LRs & Others

...Respondent(s)

CORAM:

HON'BLE MS. JUSTICE NIDHI GUPTA

Argued by:-

Mr. Gurcharan Dass, Advocate
for the petitioner.Mr. Sandeep K. Sharma, Advocate
for respondents No.1(a to c) and 2.

NIDHI GUPTA, J.

Present Revision Petition has been filed by defendant No.3 against order dated 09.11.2022 passed by learned Civil Judge (Junior Division), Rohtak in Civil Suit No.35 of 07.01.2016 titled as "Gaje Singh (since deceased) and Another Vs. Smt. Brahmo Devi (since deceased) and Others (Annexure P1), whereby application moved by the petitioner under Order 14 Rule 5 read with Section 151 of the Code of Civil Procedure, 1908 (hereinafter referred to as "CPC"), for framing of additional issues, has been dismissed.

2. Brief facts of the case are that the plaintiffs/respondents No.1 and 2 herein, filed Civil Suit No.35 on 05.01.2016 (Annexure P-2) for declaration to the effect that the gift deed No.1013 dated 10.07.2009 is void illegal and not binding upon the rights of plaintiffs with consequential relief of permanent injunction. On notice, the petitioner and respondents No.3 to 5 herein, appeared, and filed written statement (Annexure P-3). Issues were

framed vide order dated 25.05.2017, and trial commenced. However, vide application dated 18.11.2019, the defendants sought the framing of additional issues including issue regarding limitation, submitting that the abovesaid suit of the plaintiffs was barred by limitation as challenge therein was laid in 2016 to gift deed of 2009. Vide the impugned order the said application of the defendants has been dismissed. Hence, present Revision Petition.

3. It is submitted by learned counsel for the petitioner that by way of present Suit, plaintiffs/respondents No.1 and 2 herein have sought declaration to the effect that gift deed No.1013 dated 10.07.2009 is void, illegal, ultra vires and the same is not binding upon the rights of plaintiffs; with consequential relief of permanent injunction restraining the defendants from interfering in the peaceful possession of the plaintiffs over the plots in question as fully detailed in the plaint. It is submitted that the said Suit (Annexure P2) was filed by the respondents/plaintiffs on 05.01.2016 whereby they had laid challenge to gift deed of 2009, and therefore, the said Suit was time barred. It is submitted that accordingly, the petitioner filed the present application dated 18.11.2019 (Annexure P4) under Order 14 Rule 5 CPC for framing of additional issues. It is submitted that the issue of limitation is intrinsic to the Suit between the parties and therefore, a decision upon the same is imperative for the proper adjudication of the matter.

4. It is submitted that however, proper adjudication upon the said issue can only be if parties are permitted to lead evidence in respect of the same. It is submitted that parties can lead evidence in this regard only if proper issue is framed in respect thereof. However, vide the impugned order

the learned trial Court has mechanically dismissed the petitioner's application without considering the importance of the issue at hand.

5. It is submitted that during cross-examination of PW1-respondent/plaintiff No.1, he has admitted that he had knowledge of the gift deed as far back as in 2008. However, respondent/plaintiff filed the Civil Suit only in the year 2016 and therefore, on the face of it, the Suit is barred by limitation and, in the interest of justice and for proper adjudication of the matter, the petitioner ought to be permitted to raise additional issue in this regard.

6. It is further submitted that the two new issues sought to be framed by the petitioner are as follows:-

- "i. Whether the suit filed by the plaintiff is time barred? OPD
- ii. Whether the gift deed bearing No.1013 dated 10.07.2009 is valid and acted upon if so, what effect? OPD"

7. It is submitted that the petitioner is taking onus to prove the said issues upon himself and the respondent has the right to rebut the evidence led by the petitioner in respect of the said issues, and therefore, no prejudice shall be caused to the respondent.

8. It is further vehemently submitted by learned counsel for the petitioner that as per Section 3 of Limitation Act, 1963 it was not mandatorily required that the petitioner should have taken the ground of limitation in his written statement. Learned counsel for the petitioner submits that as per the said provision, no pleading regarding limitation needs to be made and therefore, reasoning in the impugned order is illegal. However,

learned Trial court has not considered this aspect of the matter. Therefore, impugned order suffers from inherent infirmity, and should be set aside.

9. In support, Learned counsel for the petitioner relies upon judgments of this Court in **Kuldeep Singh Randhawa Vs. Resham Singh Randhawa (P&H) Law Finder Doc ID # 1114997**; **Om Lata Kalyan Vs. Renuka (P&H) Law Finder Doc ID # 1021927**; **Tota Ram Vs. Xpro India Ltd. (P&H) Law Finder Doc ID # 1322108** and **Kulbir Singh Vs. Paramjit Kaur (P&H) Law Finder Doc ID # 1120502**; and of Gujarat High Court in **Uttar Gujarat Vij Co. Ltd. Vs. Dhulabhai Kodarbhai Vankar (Gujarat) Law Finder Doc ID # 169977**.

10. Per contra, it is submitted by learned counsel for the plaintiffs/respondents No.1 and 2 herein, that admittedly, the petitioner has not taken the plea of limitation in the written statement filed by him. It is stated that perusal of written statement (Annexure P3) shows that no pleading regarding limitation was taken by the petitioner therein. It is submitted that therefore, petitioner cannot be permitted to frame issue regarding limitation, the same being beyond pleadings.

11. It is further submitted that the Suit was filed on 05.01.2016 and written statement (Annexure P3) was filed by the petitioner on 25.04.2017, and thereafter, trial has commenced when issues were framed in the matter vide order dated 25.05.2017. It is submitted that therefore, the present application has been filed almost two-and-a-half years thereafter on 18.11.2019, for framing of additional issues. It is submitted that therefore, the said application cannot be allowed at this belated stage.

12. It is stated that moreover, trial is at the stage of defence evidence and if the petitioner's application is allowed then it would lead to de novo trial as the petitioner will file amended written statement to which the respondent will necessarily file rejoinder. Issues will have to be re-framed on basis of the amended pleadings of the parties and thereafter, trial will recommence.

13. It is submitted that had the petitioner taken the plea of limitation in his written statement, respondent would have led evidence in affirmative in respect of the said issue. However, in the absence of such a pleading, the petitioner cannot be permitted, at this belated stage, to raise the plea of limitation.

14. It is submitted that it is the pleaded case of the respondent, as evident from para 4(vii) of the Civil Suit (Annexure P2), that the respondent had got knowledge of the gift deed only in the year 2013 and therefore, it cannot be said that his Civil Suit is time barred. It is submitted that the petitioner cannot even derive benefit of the cross examination dated 30.10.2017 of Gaje Singh-PW1 as, where is the question of respondent having knowledge of gift deed in 2008 when the gift deed itself is dated 10.07.2009.

15. It is further stated that in the present case it is the pleaded case of the respondents that they had got knowledge of the gift deed in 2013 and therefore, limitation in the present case is a question of law and fact as evidence will have to be led in the matter.

16. In support, learned counsel relies upon judgments of Hon'ble Supreme Court in **Narne Rama Murthy Vs. Ravula Somasundaram (SC) Law Finder Doc ID # 84411**; and **Food Corporation of India Vs. M/s Babulal Agrawal (SC) Law Finder Doc ID # 66289**.

17. No other argument is raised on behalf of the parties.

18. I have heard learned counsel, and with their able assistance perused the file as well as the voluminous case law cited by them.

19. For the proper and complete understanding of the dispute at hand, the genus thereof, in chronological sequence, is noticed as below:

22.02.1966 - It is the plaintiffs' case that Juglal son of Sohlu, grandfather of Gaje Singh plaintiff No.1/respondent no.1 herein, executed a registered Will bearing document No.211/3 dated 22.02.1966 in favour of Gaje Singh, Azad Singh (deceased husband of plaintiff No.2/respondent No.2 herein), Sukhbir Singh (defendant No.2/petitioner herein) and Gian Singh (defendant No.4/proforma respondent No.5 herein), in equal shares. Gaje Singh, Azad Singh, Sukhbir Singh, and Gian Singh are all real brothers being sons of Fateh Singh s/o Juglal s/o Sohlu.

Vide the abovesaid registered Will No.211/3 dated 22.02.1966, entire estate of Juglal including plots No.9, 17, 28 and 55 (carved out in Civil suit titled 'Samay Ram and Others Vs. Dharma' which was decided on 23.01.1976), were inherited by his aforementioned four grandsons namely Gaje Singh, Azad Singh, Sukhbir Singh, and Gian Singh.

On the contrary, it is the petitioner's case that the said plots in question were allotted after the death of Jug Lal and as such, came in the share of his children namely Fateh Singh (father of the petitioners and respondents No.1 and 2 herein), Smt. Bed Kaur and Smt. Brahmo Devi (Aunts/Bhuas of the petitioners and respondents No.1 and 2 herein). And as such the property of Fateh Singh comes into share of his ten LRs., and the plaintiff No.1, Azad Singh, defendant No.2 and 3 became owners to the extent of 1/30th share of the said property.

1973 - Juglal son of Sohlu, died in the year 1973.

1976 - Civil suit titled 'Samay Ram and Others Vs. Dharma' was decided on 23.01.1976.

26.07.1973 - Civil Suit No.430 and 432 dated 26.07.1973 titled 'Gaje Singh Vs. Gian Singh' and 'Gaje Singh versus Sukhbir Singh' respectively were filed.

12.08.1993 - These civil suits were decided whereby, Sukhbir Singh and Gian Singh suffered civil court decrees in favour of the present plaintiffs regarding their half share (1/4th share each) in the said plots No.9, 17, 28 and 55.

10.07.2009 - Brahmo Devi daughter of Juglal executed a registered Gift Deed on 10.7.2009 bearing Wasika No.1013 regarding 1/3rd share of above said four plots bearing Nos.9, 17, 28 and 55 total area 1707 square yards in favour of Sukhbir Singh petitioner and his brother Gian Singh (defendants No.2 and 3 in civil suit now filed).

01.04.2014 - During the proceedings of Civil Suit No.124 of 2008/2013 titled as 'Sukhbir Singh vs. Gaje Singh' decided on 01.04.2014, the petitioners relied upon abovesaid gift deed dated 10.07.2009 claiming therein that late Brahmo Devi d/o Juglal had executed said gift deed regarding 1/3rd share of abovesaid 4 plots bearing No.9, 17,28, and 55 total area of which comes to 1707 sq. yards and were carved out in partition of abadi land by civil Court.

07.01.2016 - Present civil suit No.35 of 07.01.2016 (AnnexureP-2) was filed by plaintiffs Gaje Singh and Angoori Devi widow of Azad Singh against defendants Smt. Brahmo Devi through her LRs Hawa Singh s/o Brahmo Devi, Sukhbir Singh (present petitioner), and his brother Gian Singh for declaration and permanent injunction. In this civil suit, gift deed dated 10.07.2009 has been challenged in para No.4 of the plaint.

25.04.2017 - Written statement (AnnexureP-3) was filed in the abovesaid present Civil Suit, by the present petitioner and his brother Gian Singh.

25.05.2017 - Vide order dated 25.05.2017, the following four issues were framed by the learned trial Court:

- "1. Whether plaintiff is entitled to a decree of declaration as prayed for? OPP
2. Whether plaintiff is entitled to decree of permanent injunction as prayed for? OPP
3. Whether the plaintiff has no locus standi or cause of action to file the present suit? OPD
4. Relief."

30.10.2017 - It is the case of the petitioner herein that while appearing as PW-1, Gaje Singh, during cross-examination admitted that he came to know in the year 2008 when Advocate of Sukhbir told him about gift deed of Brahmo Devi.

18.11.2019 - Petitioner filed present application under Order 14 Rule 5 CPC (Annexure P-4) for framing the following additional issues:-

- i) Whether the suit filed by the plaintiff is time barred? OPD
- ii) Whether the gift deed bearing No.1013 dated 10.7.2009 is valid and acted upon. If so, what's effect? OPD

NIL - Reply dated 'Nil' (Annexure P-5) was filed by the plaintiffs to the petitioner's application for framing of additional issues.

09.11.2022 - Vide the impugned order the learned trial Court dismissed this application (order is at page 16-19 Annexure P-1 in the paper book) on the ground that there is no plea of limitation taken by the defendants in their written statement (Annexure P-3) to the suit, nor any counter claim has been filed by the petitioner. Vide the impugned order learned trial Court has further held that the second additional issue sought to be framed, already stands covered by the issue No.1 framed by the trial Court vide order dated 25.05.2017.

20. It has been vehemently pleaded on part of the petitioner that under Section 3 of Limitation Act, 1963, he was not mandatorily required to raise the plea of limitation in his written statement. Said Section 3 of Limitation Act, 1963 is reproduced hereinbelow:

“Bar of Limitation: (1) Subject to the provisions contained in Section 4 to 4 (inclusive), every suit instituted, appeal preferred and application made after the prescribed period shall be dismissed although limitation has not been set up as a defence.”

21. A bare reading of the above provision, at first glance no doubt evinces that defence regarding limitation need not be raised in the pleadings. However, simple reliance on the said provision cannot come to rescue of the petitioner in the absence of averments in the written statement regarding suit being barred by limitation, as from the plaint itself it is quite clear that limitation, in the present case, is a mixed question of law and fact.

22. As has been borne out from the above facts, it is the case of the plaintiffs that they got knowledge of the disputed gift deed only in the year 2013. Perusal of Para No.3, Para No.4 (vii), as well as Para No. 8 of the plaint (Annexure P-2) reveals that the plaintiffs have specifically averred that during the proceedings of Civil Suit No.124 of 2008 decided on 01.04.2014, in the year 2013 they came to know about the gift deed. In para 8 of the plaint the plaintiffs have pleaded about accrual of cause of action in 2013. Therefore, limitation in the present case is not just a pure question of law, as evidence will have to be led as to when the plaintiffs acquired knowledge of the gift deed. It therefore, becomes a mixed question of law *and* fact.

23. In this regard reliance may be placed upon Para 5 of judgment of the Hon'ble Supreme Court in **Narne Rama Murthy (supra)**, which is reproduced hereinbelow:-

“5. We also see no substance in the contention that the Suit was barred by limitation and that the Courts below should have decided the question of limitation. When limitation is the pure question of law and from the pleadings itself it becomes apparent that a suit is barred by limitation, then, of course, it is the duty of the Court to decide limitation at the outset even in the absence of a plea. However, in cases where the question of limitation is a mixed question of fact and law and the Suit does not appear to be barred by limitation on the face of it, then the facts necessary to prove limitation must be pleaded, an issue raised and then proved. In this case the question of limitation is intricately linked with the question whether the Agreement to Sell was entered into on behalf of all and whether possession was on behalf of all. It is also linked with the plea of adverse possession. Once on facts it has been found that the purchase was on behalf of all and that the possession was on behalf of all, then, in the absence of any open, hostile and overt act, there can be no adverse possession and the Suit would also not be barred by limitation. The only hostile act which could be shown was the advertisement issued in 1989. The suit filed almost immediately thereafter.”

24. Paras 11 and 12 of another judgment of the Hon’ble Supreme Court rendered in **Food Corporation of India (supra)** are also apposite and are duly reproduced hereinbelow:-

“11. The next contention has been raised that the suit filed by the plaintiff was barred by time. The tender was accepted by the appellant on 11.6.1985. The premises were handed over to the defendant on

24.1.1987. The defendant gave 15 days' notice to vacate the premises on 10.10.1988 on which date they vacated the premises paying the rent up to 10.10.1988. The suit was filed on 4.10.1991.

12. In connection with this objection regarding limitation, learned counsel for the plaintiff has submitted that no such plea was ever raised by the defendant nor any facts or reasons were indicated as to in what manner the suit was barred by limitation. No issue was framed on the question of limitation. That point was not raised even in the High Court nor in this Court too. It is only in the list of dates/synopsis it is vaguely stated that the suit was time barred. Learned counsel for the defendant appellant, however, relying upon Section 3 of the Limitation Act submits that it was the duty of the Court to see as to whether the suit was within limitation or not. A suit filed beyond limitation is liable to be dismissed even though limitation may not be set up as a defence. The above position as provided under the law cannot be disputed nor it has been disputed before us. But in all fairness it is always desirable that if the defendant would like to raise such an issue, he would better raise it in the pleadings so that the other party may also note the basis and the facts by reason of which suit is sought to be dismissed as barred by time. It is true that the Court may have to check at the threshold as to whether the suit is within limitation or not. There is always an office report on the limitation at the time of filing of the suit. But in case the Court does not prima facie find it to be beyond time at that stage, it would not be necessary to record any such finding on the point much less a detailed one. In such a situation at least at the appellate stage, if not

earlier, it would be desired of the defendant to raise such a plea regarding limitation. In the present case except for making a passing reference in the list of dates/synopsis no such ground or question has been raised or framed on the point of limitation. It is quite often that question of limitation involves question of facts as well which are supposed to be raised and indicated by the defendant. The objecting party is not supposed to conveniently keep quiet till the matter reaches the Apex Court and wake up in a non-serious manner to argue that the Court failed in its duty in not dismissing the suit as barred by time. The trial Court may not find the suit to be barred by time and proceed with the case but in that event the Court would not be required to record any such finding unless any plea is raised by the defendant. In this connection, learned counsel for the respondent has placed reliance upon a decision reported in (1964)1 SCR 495 at page 506, Ittavira Mathai v. Varkey Varkey & Anr., wherein it has been held that if it is a mixed question of fact and law, a party would not be allowed to raise it later on, in case such an objection was not raised at the earliest. We, however, find that the period of limitation would be three years as the matter would be covered by Article 55 of the Limitation Act as pointed out by the learned counsel for the respondent. Article 55 reads as under :

"Description of suit	Period of Limitation	Time from which period begins to run
55. For compensation for the breach of any contract, express or implied not herein specially provided for	Three years	When the contract is broken or (where there are successive breaches) when the breach in respect of which the suit is instituted occurs or (where the breach is continuing) when it

		ceases.”
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In the case in hand, as indicated above, the notice terminating the contract is dated 26.9.1988 saying that "we are going to vacate your above plinths by October 10, 1988". The plaintiff replied to the notice saying that the defendant could not vacate the premises before 23.1.1990. However, the defendant vacated the premises on 10.10.1988. This is the date when the contract was broken and cause of action also accrued. The suit had been file don 4.10.1991 i.e. within three years of vacating the premises. In view of the position indicated above, we do not find any merit in the argument raised on behalf of the appellant that the suit of the plaintiff was barred by time. In the result, we find no substance in the appeal preferred by the Food Corporation of India.”

25. Thus, from a reading of the above pronouncements it becomes clear that in cases where issue of limitation is a mixed question of law and fact, Section 3 of the Limitation Act will not come to the rescue, and it is required that ground of limitation be raised in the pleadings.

26. In fact, not just that there is no plea that the suit filed by the plaintiffs is time barred has been taken in the written statement but, even in the written statement filed by the petitioner and proforma respondents, the averments of Para No.3, 4(vii) and 8 of the plaint has not been properly controverted. Perusal of the petitioner’s written statement (Annexure P-3) shows that there is no categorical denial of the plaintiffs averments in Para No.3, 4(vii) and 8 of the plaint to the effect that they had got knowledge of the gift deed in 2013. Therefore, it is a misnomer for the

petitioner to suggest that limitation, in the present case, is a pure question of law. Clearly, Section 3 of Limitation Act is applicable only when limitation is a pure question of law whereas in the present case question of limitation is of law and fact and therefore, pleading to such effect was required.

27. It has further been pleaded by the petitioner that the respondents/plaintiffs had knowledge of the gift deed as far back as 2008, as is evident from the cross-examination of PW1/plaintiff No.1 Gaje Singh wherein he has stated that *"...Brahmo Devi had got transferred land in the names of Gian Singh and Sukhbir. Regarding this, I came to know in the year 2008 when the Advocate of Sukhbir told me about gift deed of Brahmo Devi..."* However, in my view, said argument of the petitioner is fallacious. It is but trite to suggest that when the gift deed itself is dated 10.07.2009, how could the plaintiffs have knowledge of the same in 2008. Hence, there is no question of having knowledge of gift deed in year 2008.

28. It is also relevant that trial had commenced in the matter on 25.05.2017 when issues were framed; plaintiff was cross examined on 30.10.2017; evidence of the plaintiffs had completed; evidence of defendants' going on; evidence of defendant Gian Singh defendant No.4 had been closed; when the petitioner filed the present application over two years hence, on 18.11.2019 at the fag end of trial. Petitioner cannot be allowed to take advantage of his own wrong at this belated stage. Plaintiffs have already led evidence, defendants' evidence is going on, framing of additional issues at this stage will result in de novo trial. Further, without amendment of written

statement issue of limitation cannot be framed. Present application (Annexure P-4) has been filed on 18.11.2019 when trial is almost completed.

29. Judgements relied upon by the petitioner are distinguishable as, in the said judgments, specific plea regarding suit being barred by limitation was raised in the written statement. Hence, those judgements are not applicable to the present case.

30. Therefore, to sum up it is reiterated that issues are framed on the basis of the pleadings of the parties. If there is no pleading, no issue can be framed. As in the written statement no plea regarding suit barred by limitation has been raised, no issue can be framed in this regard. Issue of limitation in this case is mixed question of law and facts, defendants are obligated to specifically plead in the written statement that the suit is barred by limitation. No application for amendment has been filed by the defendant to raise plea of suit being time barred. It is well-settled law that no evidence can be led with respect to a fact which has not been pleaded. Any evidence led beyond pleadings cannot be read into. Thus, the learned trial Court rightly dismissed the application (Annexure P-4) filed by the petitioner. The reasoning assigned by the learned trial Court is based on correct appreciation of law and facts.

31. I am, therefore, in complete concurrence with the following conclusion of the learned trial Court in the impugned order:

“5. Having heard the respective contentions raised by learned counsel for the parties and having perused the case file very carefully, the court is of the considered view

that issues as claimed by defendant No.3 are not required to be framed as while framing issues, pleadings of the parties are to be seen and perusal of written statement filed by defendant No.3 makes it evident that applicant has no where pleaded that suit of plaintiff is time barred, therefore, this issue cannot be framed. As for as issue regarding validity of impugned gift deed and its execution is concerned the same is covered under issue No.1 already framed because plaintiff has challenged the gift deed as illegal, null and void. Therefore, in issue No.1, finding would come whether impugned gift deed is valid or illegal. Hence, application being devoid of merits is, hereby, dismissed.”

32. Even regarding new issue No.2, it is clear that the same is covered by issue No.1 originally framed by the learned trial Court on 25.05.2017.

33. Accordingly, I find no case is made out to exercise the revisional jurisdiction of this Court. Present Revision Petition accordingly stands **dismissed**.

34. Pending application(s) if any also stand(s) disposed of.

02.06.2023

Sunena

(Nidhi Gupta)

Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No