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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Reserved on: 04th August, 2023

Date of Decision: 20th November, 2023

+ CM(M) 845/2019 & CM APPL. 25672/2019

HARGURSHARAN SINGH

..... Petitioner

Through: Mr. Peeyoosh Kalra, Ms. Nikita Anand, Mr. Yashwant S. Baghel and Mr. Rishabh Thakur, Advocates along with Petitioner in person

versus

AMRINDER KAUR & ORS

..... Respondents

Through: Mr. Avtar Singh, Advocate for R-1
None for Respondent Nos. 2 and 3

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J:

1. This petition filed under Article 227 of Constitution of India impugns the order dated 26.03.2019 passed by the SCJ – cum – RC, Central District, Tis Hazari Courts, Delhi ('Trial Court') in civil suit no. 96109/2016, titled as '**Smt. Amrinder Kaur v. Hargurusharan Singh**', whereby the Trial Court while deciding the Petitioner's application under Order XIV Rule 5 of Code of Civil Procedure, 1908 ('CPC'), re-framed the issues, which reads as under:

1. Whether plaintiff is entitled for relief of declaration and permanent



injunction? OPP

2. Whether suit of the plaintiff is barred by limitation? OPD

3. Whether suit of plaintiff is improperly valued? OPD

4. Whether suit is barred by Sec. 34 of Specific Relief Act? OPD

5. Whether Armender Kaur and Armender Hargovind Singh are two different entities and that suit is filed by Amrender Hargovind Singh, impersonating as Amrender Kaur? OPD

6. Relief.

1.1. It is a matter of record that issues were earlier settled in the suit proceedings on 13.01.2016.

2. The Petitioner herein is aggrieved by the impugned order to the effect that Trial Court while reframing the issues, deleted certain issues earlier framed vide order dated 13.01.2016 and did not frame the issues suggested in the application filed under Order XIV Rule 5 of CPC.

2.1. The Petitioner herein is the defendant no.1, the Respondent no.1 is the plaintiff and Respondent nos. 2 and 3 are defendant nos. 2 and 3 respectively in the civil suit. The defendant nos. 2 and 3 respectively, are the son-in-law and daughter of defendant no.1 and have been proceeded ex-parte before the Trial Court. Similarly, the said defendant nos. 2 and 3 have not appeared in these proceedings.

2.2. The suit has been filed by the plaintiff seeking declaration and injunction against the defendants from interfering in her possession of the subject land. The declaration has been sought to the effect that the sale deed dated 03.07.1991 executed by the defendant no.1 in favour of defendant nos. 2 and 3, as delineated in Book no.1, Vol. 397/403, pages 117/149-152 A.D.A.D-1 no. 1405 dated 04.07.1991, in the office of Sub-Registrar, Tehsil Bilaspur, District Rampur, be declared as fabricated and void.

3. For ease of reference, the parties are being referred to by their original



rank and status as is before the Trial Court.

4. Brief facts leading to filing of present petition are as under:

4.1. Initially, a cultivable land bearing plot no.1/5, M Area 2.426 hqt., with rent of Rs. 60/- per years, situated in village, Bihat Tehsil Bilaspur, District Rampur ('subject land'), was owned by Col. Hargobind Singh, who had gifted the said land to the plaintiff i.e., Smt. Amrinder Kaur, by way of gift deed dated 17.07.1979. The plaintiff is the daughter of Col. Hargobind Singh and Smt. Parminder Kaur.

4.2. The defendant no.1 i.e., Sh. Hargurusharan Singh, is the paternal uncle of plaintiff. A power of attorney ('PoA') was executed by the plaintiff in favour of defendant no.1 on 27.03.1991. However, in the plaint it is stated that the said PoA was orally cancelled in April, 1991, and subsequently, the same was cancelled in writing as well. It is stated that thereafter, the defendant no.1 herein was left with no right, authority or interest to transfer the said subject land.

4.3. It is stated that however, despite the aforesaid cancellation of PoA, the defendant no.1 subsequently, vide sale deed dated 03.07.1991, fraudulently transferred the subject land to defendant nos. 2 and 3 for a consideration of Rs. 1,50,000/-.

4.4. It is stated that the plaintiff learnt about the aforesaid fact upon inspection of the revenue records and consequently, present civil suit was filed by the plaintiff through her mother, Smt. Parminder Kaur, as her attorney.

4.5. The defendant no.1 filed his written statement to the said suit, inter alia, disputing the authority of Smt. Parminder Kaur to file the suit on the ground that she had never been or is the power of attorney holder of the



plaintiff. It is further stated that the plaintiff at no stage raised any objection to the PoA executed in his favour or the sale deed dated 03.07.1991 executed by him in favour of defendant nos. 2 and 3.

4.6. The said suit was initially filed before the Civil Judge, Junior Division, Rampur as original case no. 267/2002, however, the said suit along with other connected matters were transferred by the Supreme Court to Trial Court in Delhi vide order dated 09.04.2004 passed in Transfer Petition (Civil) no. 568/2003.

4.7. The issues were framed (after 14 years) by the Trial Court vide order dated 13.01.2016 and the matter was set down for recording of evidence. The plaintiff's evidence stood concluded on 03.09.2016 and the matter was next listed for defendant's evidence.

4.8. The defendant no.1 at this stage filed the application under Order XIV Rule 5 of CPC for amendment, striking off and framing of additional issues, which was disposed of vide impugned order dated 26.03.2019.

4.9. The suit is presently at the stage of recording of evidence on behalf of defendant no.1.

Submissions of counsel for defendant no.1 - Petitioner

5. The learned counsel for the defendant no.1 states that the issues in the civil suit were initially framed on 13.01.2016, the plaintiff's evidence was closed on 03.09.2016 and the matter was put up for defendant's evidence.

5.1. He states that at this stage, the defendant no.1 filed the application under Order XIV Rule 5 of CPC, dated 28.09.2016, for recasting of the issues framed on 13.01.2016 and for framing of additional issues arising from pleadings of the parties.

5.2. He states that though the Trial Court vide impugned order dated



26.03.2019 has reframed the issues; however, the issues proposed by defendant no.1 in his application under Order XIV Rule 5 of CPC have not been framed.

5.3. He therefore, prays that six (6) issues proposed by defendant no. 1 in his application are liable to be framed, in addition, to the issues framed by the Trial Court on 26.03.2019.

5.4. He states that the evidence affidavit of defendant no.1 has already been tendered and he is being presently cross-examined. He states that defendant no.1 undertakes before this Court that no amendment to this said evidence affidavit would be required as all necessary averments in support of the proposed six (6) issues have already been made in the said evidence affidavit.

5.5. The defendant no.1 in support of his application, relies upon a tabular note dated 04.08.2023 handed over to this Court during the course of hearing to justify the framing of the additional issues. He states that the issues proposed arise out of the pleadings of fact and law, raised by the defendant no.1 in his written statement. The six (6) additional issues urged by the counsel for the defendant no.1 during the course of hearing are as under:

- 1) Whether civil court has jurisdiction to entertain and try the present suit and the suit is barred by provisions of Section 330-331 of U.P.Z.A. & L.R. Act? OPD
- 2) Whether the suit is undervalued and the court fee paid is insufficient? OPD
- 3) Whether the signatory of the plaint – the alleged power of attorney Smt. Parminder Kaur is legal entitled and empowered to sign, verify and institute the suit in respect of the land in dispute? OPP
- 4) Whether the plaintiff is cultivator in possession as land holder with transferable right of the disputed land? OPP



5) Whether power of attorney dt. 27.03.1991 executed by plaintiff in favour of defendant no.1 has been validly & legally cancelled? OPP

6) Whether the defendant's no.2 & 3 are bonafide purchasers of valuable consider? If so, its effects. OPD

5.6. The defendant no.1 in support of his submissions has relied upon the following judgment of the Coordinate Bench of this Court:

(i) ***Sana Herbal Pvt. Ltd. v. Mohsin Dehlvi, 2022 SCC OnLine Del 4482; and***

(ii) ***Anil Kumar v. Devender Kumar and Ors., 2019 SCC OnLine Del 8782***

Submissions of counsel for plaintiff – Respondent No.1

6. The learned counsel for the plaintiff states that proposed issue no. 1 i.e., “Whether Civil Court has jurisdiction to entertain and try the present suit and the suit is barred by provisions of Section 330 – 331 of U.P.Z.A & L.R. Act? OPD”, does not survive for consideration in view of the Trial Court’s earlier order dated 05.04.2010 passed in these proceedings.

6.1. He states that, in addition, the said objection raised by defendant no.1 qua the bar of Section 330 - 331 of U.P. Zamindari Abolition and Land Reforms Act, 1950 (‘Act of 1950’), was rejected by a Coordinate Bench of this Court vide common judgment dated 30.09.2010 passed in CM(M) 947/2010 and other connected petitions.

6.2. He states that the learned Coordinate Bench while deciding the maintainability of the civil suit filed by Col. Hargobind Singh against defendant no.1, considered the said objection and held that since the title of plaintiff is not under any cloud and he is in possession of the land, he is not required to seek any declaration of title in the said land. He states that this Court further observed that in the civil suit, the plaintiff was seeking



cancellation of the sale deed registered on 07.01.1996, on the ground of fraud and misrepresentation and accordingly, this Court held that the plaint is not liable to be rejected in view of Section 229-b, 229-d and 331 of Act of 1950.

7. He states that with respect to the proposed issue no.2 i.e., “*Whether the suit is undervalued and the Court fee paid is insufficient? OPD*”, the same already stands framed vide order dated 26.03.2019 as Issue no.3 i.e., “*Whether suit of plaintiff is improperly valued? OPD*”.

7.1. He further states that plea of insufficiency of Court fees is not maintainable since the relief sought is only with respect to the declaration and injunction.

8. He states that with respect to the proposed issue no.3 i.e., “*Whether the signatory of the plaint – the alleged power of attorney Smt. Parminder Kaur is legally entitled and empowered to sign, verify and institute the suit in respect of the land in dispute? OPP*”, the said issue as well is duly covered by issue no.1 i.e., “*Whether plaintiff is entitled for relief of declaration and permanent injunction?*”, framed by the Trial Court on 26.03.2019 and a separate issue need not be framed in this regard.

9. He states that with respect to issue no. 4 i.e., “*Whether the plaintiff is cultivator in possession as land holder with transferable right of the disputed land? OPP*”, the same does not arise for consideration since no relief of possession has been sought by the plaintiff in the civil suit. He further states that this issue was raised by the defendant no.1 in his application filed under Order VII Rule 11 of CPC and the same has already been rejected by the Trial Court vide order dated 05.04.2010, which order has been upheld by the learned Coordinate Bench of this Court vide judgment dated 30.09.2010.



10. He states that with respect to the proposed issue no.5 i.e., “*Whether power of attorney dt. 27.03.1991 executed by plaintiff in favour of defendant no.1 has been validly & legally cancelled? OPP*”, the same as well is already covered by the issue no. 1 framed by the Trial Court vide order dated 26.03.2019 and therefore, no separate issue is required to be framed in this regard.

11. He states that lastly, with respect to the proposed issue no.6 i.e., “*Whether the defendant’s no.2 & 3 are bonafide purchasers for valuable consideration? if so, its effects. OPD*” the same cannot be framed at the instance of defendant no.1. He states that the defendant nos. 2 and 3 are the family members of defendant no.1 and are not bona fide purchasers. He states that the said defendant nos. 2 and 3 have elected to be proceeded with ex-parte on 11.12.2019.

11.1. He states however, without prejudice to her rights, the plaintiff has no objection if an issue is framed to the following effect:

Whether the defendant no.1/petitioner, had any valid or legal authority to execute the sale deed in favor of defendant no. 2 & 3 and further to retain the sale proceed? OPD

11.2. He states that the said issue, in his submission, would sufficiently cover the effect of all the defenses sought to be raised by defendant no.1.

12. He states that plaintiff herein is admittedly recorded owner of the subject land and she had executed a PoA in favour of the defendant no.1 who is her paternal uncle. He states the defendant no.1 was entrusted to take care of the subject land, however, the said defendant acting upon the said PoA illegally sold the subject land without the consent of the plaintiff in favour of his own daughter and son-in-law i.e., defendant nos.3 and 2 respectively.

12.1. He states that the sale was unauthorized and the sale consideration



recorded in the sale deed was also retained by defendant no.1.

12.2. He states that the civil suit was filed in the year, 2002, the issues were framed on 13.01.2016 and plaintiff evidence was completed on 03.06.2016. He states that the issues were reframed by the Trial Court on 26.03.2019 with the consent of the parties and this petition is not maintainable on the said ground alone. He states that the filing of the present petition is an abuse of process. He states DW-1 has already tendered his affidavit and has been cross-examined at length on 21.01.2020, 29.02.2020, 12.04.2022 and 31.12.2022 and the present application is only another attempt to delay the suit proceedings.

12.3. He states that the defendant nos. 2 and 3 have proceeded ex-parte on 11.12.2019 and the pleas which are raised for and on behalf of defendant nos. 2 and 3 cannot be considered in these proceedings.

Findings and analysis

13. This Court has considered the submissions of the counsel for the parties and perused the record.

14. The impugned order dated 26.03.2019 does not record any objection of defendant no.1 to the issues reframed on the said date. It does not appear from the said order that any further issues were pressed by defendant nos.1 to 3 at that stage. This gives credence to the submission of the counsel for the plaintiff that the issues were reframed on 26.03.2019 with the consent of the parties and on that date the parties were satisfied. However, since the impugned order does not record the consent of the parties, this Court is proceeding to examine the submissions of the defendant no.1 with respect to the necessity, if any, of framing six (6) additional issues proposed in his application filed under Order XIV Rule 5 of CPC.



15. The defendant no.1 had submitted that he has already led evidence on each of the proposed six issues in his evidence affidavit dated 09.04.2019. This fact is being duly considered while adjudicating the present petition.

16. In the opinion of this Court, the proposed issue no. 3 i.e., “*Whether the signatory of the plaint – the alleged power of attorney Smt. Parminder Kaur is legally entitled and empowered to sign, verify and institute the suit in respect of the land in dispute? OPP*” and proposed issue no. 5 i.e., “*Whether power of attorney dt. 27.03.1991 executed by plaintiff in favour of defendant no.1 has been validly & legally cancelled? OPP*” already stand covered by the existing issue no.1 which has been framed by the Trial Court vide impugned order dated 26.03.2019.

16.1. The aforesaid clarification is sufficient and no separate issues need to be framed in this regard.

17. With respect to the proposed issue no.1 pertaining to the objections raised by the defendant no.1 with respect to bar of Section 330 and 331 of Act of 1950, this Court finds merit in the submissions of the plaintiff that the issue of maintainability of this suit has already been decided by the Trial Court vide order dated 05.04.2010, which order has been upheld by the learned Coordinate Bench of this Court vide judgment dated 30.09.2010. The Courts have held that since the title of the plaintiff in the subject land is not in dispute, she is not required to seek declaration of her title in the Revenue Court and the present suit seeking declaration that the sale deed executed by defendant no.1 is null and void is maintainable in the Civil Court. The order dated 05.04.2010 therefore, operates as res judicata in view of the judgment in ***S. Ramachandra Rao v. S. Nagabhushana Rao and Ors., 2022 SCC OnLine SC 1460***, wherein the Supreme Court has held under:



31. For what has been noticed and discussed in the preceding paragraphs, it remains hardly a matter of doubt that the doctrine of res judicata is fundamental to every well regulated system of jurisprudence, for being founded on the consideration of public policy that a judicial decision must be accepted as correct and that no person should be vexed twice with the same kind of litigation. ***This doctrine of res judicata is attracted not only in separate subsequent proceedings but also at the subsequent stage of the same proceedings. Moreover, a binding decision cannot lightly be ignored and even an erroneous decision remains binding on the parties to the same litigation and concerning the same issue, if rendered by a Court of competent jurisdiction.*** Such a binding decision cannot be ignored even on the principle of per incuriam because that principle applies to the precedents and not to the doctrine of res judicata.”

(Emphasis Supplied)

17.1. Therefore, the proposed issue no.1 does not survive for consideration.

18. With respect to the proposed issue no. 4 i.e., “Whether the plaintiff is cultivator in possession as land holder with transferable right of the disputed land? OPP”, this Court finds merits in the submissions of the counsel for the plaintiff that the said issue has also been dealt with by the order of the Trial Court dated 05.04.2010, which was upheld by the Coordinate Bench of this Court in its judgment dated 30.09.2010.

18.1. The defendant no.1 relies upon the pleas raised in his written statement in reply to paragraph 2 and paragraph 12 of the plaint for proposing framing of the said issue.

18.2. This Court is of the opinion that the effect, if any, of the said fact of possession is duly covered in the existing issue no. 1 framed vide impugned order dated 26.03.2019. The effect, if any, of the proof of the defense raised by the defendant no. 1 in paragraph 2 and 12 of written statement with respect to the possession (or absence thereof) will be duly considered by the Trial Court while considering the said issue no.1. No separate issue, as proposed by the defendant no.1, needs to be framed.



19. With respect to the proposed issue no. 6 i.e., “*Whether the defendant’s no.2 & 3 are bonafide purchasers for valuable consideration? If so, its effects. OPD*”, this Court is of the opinion that the pleadings at paragraph no. 3 of the written statement relied upon by the defendant no.1 do not give rise to the said issue. In its pleading at paragraph 3 of the written statement defendant no.1 has merely asserted that the execution of the sale deed in favour of the defendant nos. 2 and 3 by him was legal and valid.

19.1. There is no plea of bona fide purchaser; without notice; for valuable consideration made in the said paragraph of the written statement of defendant no.1.

19.2. In fact, the plea on the record is that the sale consideration, if any, paid by defendant nos. 2 and 3 has been retained by defendant no.1; and not received by the plaintiff. The fact that the defendant no.1 is father of the defendant no. 3 is significant. The plaintiff in her written submissions has proposed the following issue:

Whether the defendant no.1/petitioner, has any valid or legal authority to execute the sale deed in favor of defendant no.2 and 3 and further to retain the sale proceed? OPD

19.3. In the opinion of this Court the said issue no. 6 as proposed by defendant no.1 and the issue now proposed by the plaintiff in the written submissions is also duly covered by the existing issue no. 1 already framed by the Trial Court on 26.03.2019. Therefore, no additional issue needs to be framed.

20. With respect to the proposed issue no. 2 i.e., “*Whether the suit is undervalued and the Court fee paid is insufficient? OPD*”. The same already stands framed vide order dated 26.03.2019 as issue no.3 i.e., “*Whether suit of plaintiff is improperly valued? OPD*”. This Court is of the opinion that it would be



sufficient to clarify that the existing issue no. 3 as framed by the Trial Court on 26.03.2019 sufficiently covers the said issue proposed by defendant no.1 and if the Trial Court at the time of final adjudication comes to the conclusion that the suit was improperly valued, appropriate directions with respect to the deposit of the additional Court fees, in accordance with law, will be passed by the Trial Court at the final stage.

20.1. Thus, there is no need for recasting of the issue as proposed by the defendant no.1.

21. To sum up, with respect to the additional six (6) issues proposed by defendant no.1, this Court in the preceding paragraphs has held as under:

- (a) The proposed issue no.1 pertaining to the bar of Section 330-331 of the Act of 1950, has already been decided by the Trial Court vide order dated 05.04.2010, which has been upheld by the learned Coordinate Bench on 30.09.2010. The said orders operate as res judicata and the said issue does not survive for consideration.
- (b) The proposed issue no.2 pertaining to deposit of insufficient court fees already stands covered by existing issue no.3 framed by the Trial Court on 26.03.2019. The Trial Court will take into consideration the direction at paragraph 20 of this judgment in this regard, while passing the final judgment.
- (c) The proposed issue nos. 3 and 5 already stand covered by the existing issue no.1 and no separate issue need to be framed in this regard. The Trial Court shall bear in mind the observations at paragraph 16 and 16.1, while passing the final judgment.
- (d) The proposed issue no.4 pertaining to possession of subject land, has already been decided by the Trial Court vide order dated



05.04.2010, which has been upheld by the learned Coordinate Bench on 30.09.2010. However, if the defendant no.1 succeeds in proving his defense raised in paragraph 2 and 12 of the written statement during the course of the trial, the Trial Court shall consider its effect, if any, while deciding the existing issue no.1 as directed at paragraph nos. 18.1 and 18.2 of this order. Therefore, the proposed issue no.4 need not be framed.

(e) The proposed issue no. 6 pertaining to the cancellation of PoA and its subsequent communication to the defendant, is also duly covered by the existing issue no.1 framed by the Trial Court on 26.03.2019. The Trial Court shall bear in mind the observations at paragraph 19 to 19.3, while passing the final judgment.

Directions for expeditious trial

22. The parties during the course of arguments have also submitted that the cross-examination of defendant no.1 is at an advance stage and the evidence of plaintiff stands concluded. Therefore, considering the fact that this suit is of the year 2002 and has remained pending at the stage of evidence for 21 years, the learned Trial Court is requested to make an endeavor to hear and adjudicate the said suit within a period of nine (9) months from 19.12.2023 i.e., the next date of hearing before it.

23. None appears before this Court for defendant nos. 2 and 3.

24. This Court has perused the orders dated 26.03.2019 and 19.07.2023 passed by the Trial Court, which were placed before this Court during the course of hearing. Upon a perusal of the said orders, it is evident that the defendant nos. 1, 2 and 3 have been delaying the proceedings by frequently



changing their counsel before the Trial Court.

25. Further, the defendant nos.1, 2 and 3 are family members and while defendant no.1 has remained represented continuously before the Trial Court, the defendant nos. 2 and 3 at the initial stage of trial decided to be proceeded ex-parte and remained ex-parte for four (4) years; and thereafter have suddenly on 19.07.2023 elected to join the proceedings and have filed the application for rejoining the proceedings, in this regard.

26. It appears to this Court that this procedure of absenting from the proceedings by defendant nos. 2 and 3 is an abuse of process. Accordingly, this Court requests the learned Trial Court to exercise its jurisdiction under Order XVII of CPC to proceed against defendant nos. 1, 2 and 3, if it is of the opinion that they are deliberately not participating in the suit proceedings.

27. The defendant no.1 had made a statement before the Trial Court on 26.03.2019 that he has elected to represent himself in person before the Trial Court and therefore any application filed by him at a subsequent stage through a counsel for recall of the order of the Trial Court should be heard and decided by the Trial Court keeping in mind the statement made by the defendant no.1 before the learned Trial Court on 26.03.2019; so as to avoid abuse of legal process.

28. With the aforesaid directions, this petition is disposed of. Pending applications, if any, also stand disposed of.

MANMEET PRITAM SINGH ARORA
(JUDGE)

NOVEMBER 20, 2023/hp/aa