



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-289-2024 (O&M)
Reserved on:19.07.2024
Date of Decision: 26.07.2024

GAUTAM SARUP (NOW DECEASED) THROUGH LRS
Vs.
ANAND SAROOP AND OTHERS
..... PETITIONER
..... RESPONDENTS

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Argued by: - Mr. Amit Jhanji, Sr. Advocate, with
Ms. Eliza Gupta, Advocate, for the petitioners.

Mr. Kanwaljit Singh, SR. Advocate, with
Mr. Vaibhav Sehgal, Advocate, for respondent No.4.

DEEPAK GUPTA, J.

In this Civil Revision, under challenge is the order dated 18.11.2023 (*Annexure P1*) passed by Id. Additional District Judge, Ludhiana, whereby an application moved by the appellant-plaintiff during proceedings of Civil Appeal No.CA/131/2016 for framing an additional issue and to remand back the case to the trial Court, was dismissed.

2. To avoid confusion, parties shall be referred as per their status before the trial Court.

3.1 Mentioning the brief facts of this case is necessary to understand the controversy. One Sh. Shanti Sarup was married to Smt. Savitri Devi, who was the daughter of Pt. Karan Narain and Smt. Kesra Devi. The said couple of Savitri Devi and Shanti Sarup was blessed with 7 children i.e. 2 sons-Gautam Sarup & Anand Sarup and 5 daughters namely, Pratibha, Manorma Pathak, Sushma Trivedi, Aruna Manocha and Leela Jetly.

3.2. Plaintiff-Gautam Sarup filed a suit way back in March 2000 seeking declaration on the strength of a Will dated 23.09.1999 purported to be executed by Sh. Shanti Sarup in his favour. Defendant Nos.1 to 5 i.e. one son and four of the daughters contested the suit by filing the written statement, in which they denied the execution of any Will dated 23.09.1999 by Shri Shanti Sarup. They rather set up a Will

dated 19.11.1982 purported to be executed by Sh. Shanti Sarup. It was further pleaded by them that Plaintiff-Gautam Sarup had wrongly represented himself to be son of Shanti Sarup, as in fact, way back in 1933, he had been adopted by her maternal grandparents (*Nana - Nani*) i.e., Pt. Karam Narain and Smt. Kesra Devi. It was also claimed by these defendants that on the death of Pt. Karam Narain, his estate was inherited by his two legal heirs i.e. Gautam Sarup (adopted son) and Smt. Savitri Devi (daughter-natural mother of the plaintiff) and that after the death of Kesra Devi, her estate was inherited by the plaintiff-Gautam Sarup being his only legal heir. Defendants also filed their counter-claim.

3.3 Plaintiff in his replication controverted the stand of defendants.

3.4 Although as many as 10 issues were framed by the trial Court apart from the relief, the material issue No.5, concerning present revision petition is as under: -

“Whether Gautam Sarup inherited the properties left by Kesra Devi as her legal heir? OPD counter claim”

3.5 Both the parties led evidence to support their respective stands and to controvert the stands of each other. Trial Court discarded Wills relied by both the parties and while discussing above issue No.5, came to the conclusion that plaintiff had been adopted in 1933 by his maternal grandparents Pt. Karam Narain and Smt. Kesra Devi; and that he had inherited the estate left behind by Smt. Kesra Devi.

3.6 Trial Court dismissed the suit of the plaintiff and decreed the counter-claim of defendants No.1 to 5 by holding them to be entitled to 5/6th share in the estate of Sh. Shanti Sarup; whereas, 1/6th share had to go to defendant No.6-Smt. Leela Jetly.

3.7 Not satisfied with the aforesaid judgment dated 07.11.2015, plaintiff filed the appeal in February 2016 before first appellate court.

4.1 During pendency of the appeal, plaintiff moved an application on 07.07.2022 (*Annexure P17*) under Order 17 Rule 5, coupled with Section 151 CPC and Order 41 Rule 25 CPC submitting that allegations of the defendants to the effect that he (plaintiff) was adopted by Pt. Karam Narain and Kesra Devi was vehemently challenged by him, but no issue regarding this factum was framed and that in the absence of specific issue, the trial Court wrongly upheld the contention of the defendants to the effect that plaintiff was adopted son of Pt. Karam Narain and Kesra Devi, which has caused great prejudice to the rights of the plaintiff. It was contended that had the specific issue relating to adoption been framed, he would have led

sufficient evidence to rebut the allegations leveled by the defendants. He prayed for framing of the following additional issue:-

“Whether Plaintiff-Gautam Sarup was adopted by Pt. Karam Narain and Kesra Devi being (wrongly mentioned as Dass) as alleged? OPD”

and to remand the case to the trial Court.

4.2 Needless to say that contesting defendants i.e. respondents before the appellate Court opposed the application by filing reply (*Annexure P18*).

4.3 The Appellate Court by way of the impugned order dated 18.11.2023 (*Annexure P1*) dismissed the application by observing that both the parties were alive to the contentions of each other and had led evidence accordingly and that no prejudice had been caused to the plaintiff-appellant in any manner.

5.1 Assailing the aforesaid order, it is contended by Id. senior counsel for the petitioner that since it was specifically pleaded by the defendants that plaintiff had been adopted by Pt. Karam Narain and Smt. Kesra Devi, so it was incumbent upon the trial Court to frame a separate issue on this aspect and that non-framing of the issue has prejudiced the case of plaintiff. Id. counsel contends that correct decision of a *lis* depends upon correct framing of the issues and it is only thereafter that real point in controversy can be decided.

4.2 Id. senior counsel referred to decision of Hon’ble Supreme Court rendered in ***Makhan Lal Bangal Vs. Manas Bhunia and others***, (2001) 2 Supreme Court Cases 652 and a decision of Delhi High Court rendered in ***F. Hoffmann-La-Roche Ltd. and another Vs. NATCO Pharma Limited***, 2017 SCC Online Del 7126.

5.1 Refuting the aforesaid contentions, Id. counsel for the respondents defended the impugned order by submitting that both the parties were fully aware of their respective stand. Both of them accordingly led evidence in support of their respective claims. The trial Court discussed that evidence in detail and came to the conclusion that plaintiff was adopted son of Pt. Karam Narain and Kesra Devi and in these circumstances, plaintiff-appellant cannot claim that he has been prejudiced in any manner because of non-framing of the specific issue pertaining to adoption.

5.2 Id. counsel has referred to decisions of this Court rendered in ***Bakhtaur Singh and others Vs. Balvir Chand and another***, 2016(2) Civil Court Cases 735 (P&H), ***Rajesh Saini Vs. Harish Saini and others***, 2014 (4) PLR 491, ***Ram Niwas and another Vs. Rakesh Kumar***, 1982(1) RCR (Rent) 134 and a decision of Allahabad High Court rendered in ***Mohd. Raseed Khan Vs. Nagar Palika Parishad Jhansi and another***, 2024(2) Civil Court Cases 404 (Allahabad).

6. I have considered submissions of both the sides and have appraised the record carefully.

7. It is necessary to reproduce the relevant part of the pleading regarding the controversy as raised by the petitioner. Relevant portion of preliminary objection No.2 of the written statement (*Annexure P3*) of the contesting defendant No.1 to 5 is as under: -

"Late Shri Shanti Sarup executed his only will dated 19-11-1982 during his life time. This was duly Notarised with the signatures of Shri Shanti Sarup on 1-4-1992, by Shri Daljinder Singh, Notary Public, Ludhiana. By virtue of the said Will, which is a hollow-graph i.e. in the hands of Shri Shanti Sarup, the testator himself. According to the Will, the entire properties left by Shri Shanti Sarup have devolved upon answering defendants. Gautam Sarup, the adopted son of late Pt. Karam Narain and also the plaintiff to the extent of one seventh share each. Thus, the plaintiff has only one seventh share in the properties left by late Shri Shanti Sarup and the remaining 6/7 share has devolved upon the defendants no. 1 to 6.

The plaintiff has misrepresented to the Hon'ble court regarding his parentage. The plaintiff has intentionally, wilfully and wrongly described himself in the plaint as Gautam Sarup son of "Shri Shanti Sarup". The plaintiff was born from the loins of Shri Shanti Sarup, to Smt. Savitri Devi, but he was adopted by Pt. Karam Narain, father of Smt. Savitri Devi" in the year 1993.

Pt. Karam Narain was about 36/37 years of age, when he married of his only child Savitri Devi to Shri Shanti Sarup. Defendant no. 6, Smt. Leela, was born in the year 1928 and was given over by Shri Shanti Sarup and Smt. Savitri Devi to Pt. Karam Narain, on his request, with the understanding that he may adopt her in case he wished to do so. Smt. Leela Jetly was brought up for a few years by Pt. Karam Narain, till a second son, namely Gautam Sarup (the plaintiff) was born to Sh. Shanti Sarup and Smt. Savitri Devi). Pt. Karam Narain expressed his intention to adopt a son. Therefore, Leela Jetly was returned to her natural parents and Gautam Sarup (Plaintiff) was given in adoption by Shri Shanti Sarup with the consent of his wife Smt. Savitri Devi, to Pt. Karam Narain and his wife Smt. Kesar Devi. The adoption of the plaintiff, Gautam Sarup took place in the presence of various relations of the family and also the respectables of the locality, the plaintiff was given in the lap of Pt. Karam

Narain by Shri Shanti Sarup and Smt. Savitri Devi and sweets were distributed to mark the occasion. In this manner, Pt. Karam Narain and his wife Smt. Kesar Devi adopted the plaintiff as their son and thus the plaintiff was transplanted from the family of Shri Shanti Sarup into the family of Pt. Karam Narain from the date of adoption in the presence of Pt. Hans Raj, the younger brother of Pt. Karam Narain and Pt. Parkash Dey, the younger brother of Shri Shanti Sarup and other respectables and relations. Unfortunately, both Shri Hans Raj and Pt. Parkash Dev have expired.

From the date of adoption the plaintiff has been treated by all and sundry as the son of Pt. Karam Narain, and he has been brought up as such. Plaintiff was entered in the School records as the son of Pt. Karam Narain. Pt. Karam Narain expired before the partition of the country at Lahore. Smt. Kesar Devi expired in the year 1967. The plaintiff alongwith Smt. Savitri Devi- were the only legal heirs left by Pt. Karam Narain and Smt. Kesar Devi. At the time of her death, Smt. Kesar Devi owned a Booth No. 11 Sector 22-D. Chandigarh. After Smt. Kesar Devi's death the request of Gautam Sarup, the plaintiff, or the said property was transferred in the name of Gautam Sarup, the plaintiff and Smt. Savitri Devi, as the legal heirs of Smt. Kesar Devi. The said transfer was effected in the records by the orders of Estate Officer, vide memo no. 9737/CP/165 dated 30-7-1968. Copy of the said document is attached herewith. This shows, unequivocally, that the plaintiff has been treating and accepting himself, and also deriving benefits as the son of late Pt. Karam Narain and Smt. Kesar Devi.

After Pt. Karam Narain expired in the year 1945/46 at Lahore, Smt. Kesar Devi went back to her-in-law house at Satghara, Dist. Montgomery (Now in Pakistan). The plaintiff rejoined his natural parents for further education at Lahore, and had his schooling in a school at Lahore. Thereafter the family migrated to Ludhiana (Punjab) India after the partition of the country. Smt. Kesar Devi also shifted to Ludhiana and started residing with the plaintiff in a house adjoining to the house in which Shri Shanti Sarup, his wife and children were residing. The plaintiff and Smt. Kesar Devi had their meals mostly at the house of Shri Shanti Sarup. The plaintiff did his Matriculation from D.P. High School, Ludhiana. He also did his intermediate, F.Sc., B.Sc. and M.A. (English) from Govt. College, Ludhiana. In the Matriculation Certificate for the Punjab

University, his roll no. was 21995 and that he passed the Matriculation in Ist Division. In the result gazette of 1943 of the Punjab University, the plaintiff was recorded as the son of Pt. Karam Narain."

8. The corresponding para of replication (Annexure P6) filed by the plaintiff to the aforesaid written statement is as under: -

"Preliminary objection no.2 in denied. It is denied that Shri Shanti Sarup executed his only will dated 19.11.82 during his life time or that this was notarised with the signatures of Shanti Sarup on 1.4.92 by Daljinder Singh Notary Public as alleged.

It is denied that by virtue of the said will the entire properties left by Shanti Sarup devolved upon the answering defendants.

It is denied that Gautam Sarup, plaintiff, was the adopted son of late Karam Narain or that he inherited one-seventh share along with the defendants 1-6 as alleged.

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It is denied that the defendant no.6 was given over by Shanti Sarup and Savitri Devi to Pt Karam Narain on his request with the understanding that he may adopt her in case he wished to do so or that defendant no.6 was brought up for a few years by Pt Karam Narain till Gautam Sarup, plaintiff was born as alleged. It is denied that Karam Narain expressed his intention to adopt a son or Leela Jetly was returned to her natural parents and Gautam Sarup was given in adoption as alleged. It is denied that the adoption of the plaintiff took place in the presence of various relations of the family and also the respectables or that the plaintiff was given in the lap of Pt Karam Narain by Shanti Sarup and Savitri Devi and sweets were distributed as alleged. All the allegations are totally false and baseless. There was no transplantation of the plaintiff in the family or Karam Narain.

The plaintiff and defendants used to visit their grandparents as is customary in Hindu families. Not only Leela Jetly but even the defendants Anand Sarup, other sisters and plaintiff used to stay and live with their parents off and on till the death of Karam Narain in 1945. There was no question of any adoption taking place. The plaintiff was never adopted by Pt Karam Narain though after partition of the country, more particularly after Anand Sarup left

Ludhiana and Kesar Devi started living with Shanti Sarup, so it was Gautam Sarup who was serving his grandmother. She used to treat Shanti Sarup who was bestowing all the love and affection on the plaintiff as he used to serve her. However, there was no adoption at all.

It is denied that the plaintiff was entered in the school records as the son of Pt Karam Narain. Even by such describing would not make it adoption.

It is denied that the plaintiff along with Savitri Devi were the only legal heirs left by Pt Karam Narain and Kesar Devi.”

9. The aforesaid pleading leave no doubt in any manner whatsoever that parties were fully aware about the stand taken by each other, inasmuch as contesting defendants claimed the plaintiff to be adopted son of Pt. Karam Narain and Kesra Devi, having been adopted in 1933, and referred about various factors to support this contention and the plaintiff in replication controverted the said plea. Not only this the judgment passed by the trial Court (*Annexure P13*) would reveal that in para Nos.15 to 21 of the said judgment, trial Court has extensively referred about the evidence produced by the parties on the aforesaid aspect i.e. adoption of the plaintiff and upheld the contention of the defendants to the effect that plaintiff was adopted in 1933 by Pt. Karam Narain and Kesra Devi.

10. It is, thus, clear that parties were not only fully aware about the stand of each other but further led evidence accordingly in support of their respective stands and based upon the evidence led by them, the Court decided the controversy pertaining to the adoption of plaintiff.

11. In the case of ***Bakhtaur Singh and others (Supra)***, the plaintiff filed a suit for possession based on title, whereas defendant pleaded adverse possession. No specific issue was framed regarding the stand of the defendant to be in adverse possession of the disputed property. However, both the parties had led evidence to support their respective pleadings. It was held by this Court that even if no specific issue is framed with regard to the stand of the defendants-respondents claiming adverse possession and ownership on that basis, suffice is to say that as both the parties were aware of the stand taken by them respectively and had accordingly led their evidence in support of their respective claims, no prejudice had been thus caused to any of the parties because of non-framing of specific issue on the said score.

Similar view was taken by this Court in the case of ***Rajesh Saini (Supra)***

and also by Allahabad High Court in ***Mohd. Raseed Khan (Supra)***.

12. In the case of ***Ram Niwas and another (Supra)***, a Division Bench of this Court has gone to the extent that even if a certain point did not find place in the pleadings and no issue is framed, but if the parties led evidence for and against the same, the Court can still adjudicate the point.

13. As far as the authorities cited by Id. counsel for the petitioner are concerned, in the case of ***Makhan Lal Bangal (Supra)***, the matter was raised in an election petition, where the issue of non-framing of a specific issue was raised. It was observed by Hon'ble Supreme Court as under: -

“19. An election petition is like a civil trial. The stage of framing the issues is an important one inasmuch as on that day the scope of the trial is determined by laying the path on which the trial shall proceed excluding diversions and departures therefrom. The date fixed for settlement of issues is, therefore, a date fixed for hearing. The real dispute between the parties is determined, the area of conflict is narrowed and the concave mirror held by the court reflecting the pleadings of the parties pinpoints into issues the disputes on which the 'two sides differ. The correct decision of civil lis largely depends on correct framing of issues, correctly determining the real points in controversy which need to be decided. The scheme of order 14 of the Code of Civil Procedure dealing with settlement of issues shows that an issue arises when a material proposition of fact or law is affirmed by one party and denied by the other. Each material proposition affirmed by one party and denied by o(her should form the subject of distinct issue. An obligation is cast on the court to read the plaint/petition and the written statement/counter, if any, and then determine with the assistance of the learned counsel for the parties, the material propositions of fact or of law on which the parties are at variance. The issues shall be framed and recorded on which the decision of the case shall depend. The parties and their counsel are bound to assist the court in the process of framing of issues. Duty of the counsel does not belittle the primary obligation cast on the court. It is for the Presiding Judge to exert himself so as to frame sufficiently expressive issues. An omission to frame proper issues may be a ground for remanding the case for retrial subject to prejudice having been shown to have resulted by the omission. The petition may be disposed of at the first hearing if it appears that the parties are not at issue on any material question of law or of fact and the court may at once pronounce the judgment. If the parties are at issue on some questions of law or of fact, the suit or petition shall be fixed for trial calling upon the parties to adduce evidence on issues of fact. The evidence shall be confined to issues and the pleadings. No evidence on controversies not covered by issues and the pleadings, shall normally be

admitted, for each party leads evidence in support of issues the burden of proving which lies on him. The object of an issue is to tie down the evidence and arguments and decision to a particular question so that there may be no doubt on what the dispute is. The judgment, then proceeding issue-wise would be able to tell precisely how the dispute was decided.”

14. There can be no dispute to the legal proposition that proper issue should be framed as per the pleadings of the parties, but the question is as to the effect of non-framing of a specific issue on a particular aspect, regarding which both the parties were fully aware and had led evidence accordingly. Therefore, in view of facts and the circumstances of this case, the cited authority can be of no help to advance the case of the petitioner.

15. In the case of **F. Hoffmann-La-Roche Ltd. and another (Supra)**, petitioner filed a suit to restrain Natco Pharma Limited (respondent) from infringing the drug patent of Hoffmann. Later, Hoffmann filed another suit to restrain Dr. Reddy's Laboratories Ltd. and Natco, again from infringing the same patent. The issue framed was “*whether the patent is liable to be revoked*”. It was in this background that Delhi High Court held as under: -

“32. Not only are the pleadings to contain such particulars but in my opinion, in such a suit, framing of a general issue “whether the patent is liable to be revoked?” is as good as no framing an issue and allowing trial to proceed without framing of issues. CPC has provided for issues to be framed in a civil suit and framing of issues is not without purpose. Without framing of issues, neither would the parties to the litigation know what they are required to prove or disprove nor would the Court at the time of decision know what is for adjudication and on what to return findings. It would lead to an unguided trial which may even result in repeated trial with the losing party, wiser in retrospect, contending that the real controversy has not been adjudicated. Supreme Court, in **Kalyan Singh Chouhan v. C.P. Joshi (2011) 11 SCC 786**, held that the object of framing issues is to ascertain/shorten the area of dispute and pinpoint the points required to be determined by the Court, so that no party at the trial is taken by surprise. It was further held that it is the issues framed and not the pleadings that guide the parties in the matter of adducing evidence.”

16. The facts of the present case are quite distinguishable, inasmuch as, as has already been observed, parties were fully aware about the stand taken by them in respect of pleadings of each other and had led evidence accordingly, which has been duly discussed by the trial Court to come to a conclusion, which conclusion is now under challenge before the Appellate Court. As such, petitioner does not deserve to

be given any advantage of the cited authority.

17. Apart from above, conduct of the petitioner-plaintiff is also important to be noticed. Suit was filed in March 2000. Issues were framed in 2004. Suit and counter-claim of the parties were decided in October 2015. The appeal was filed in February, 2016 and then it is after more than 6 years 5 months of filing of the appeal that the application was moved for framing of the additional issue i.e. more than 22 years from the filing of the original suit. It is despite the fact that plaintiff was well aware of the stand of the defendants and had led the evidence to controvert the said stand.

18. In view of the entire discussion as above, this Court does not find any merit whatsoever in the present petition and so, the same is hereby dismissed.

26.07.2024
Vivek

(DEEPAK GUPTA)
JUDGE

<i>Whether speaking/reasoned?</i>	<i>Yes</i>
<i>Whether reportable?</i>	<i>Yes</i>