

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-2863-2019 (O&M)

Date of Decision: March 06, 2024

Santosh

...Petitioner

Versus

Rameshwar and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Tushar Gera, Advocate
for the petitioner.

None for respondent No.1.

Mr.Deepak Girotra, Advocate
for respondent No.2.

ARCHANA PURI, J.

Challenge in the present revision petition is to the order dated 08.04.2019 (Annexure P-8), whereby, an application for reframing of issues moved by the petitioner-plaintiff was dismissed.

The facts germane, to be noticed, are as follows:-

That, petitioner-plaintiff Santosh had filed a suit against her real brothers Rameshwar and Balwan, who are contesting respondents-defendants and also against one of her nephews, son of her deceased sister, namely Vikas, who is proforma defendant, thereby, seeking declaration that the plaintiff is owner in possession to the extent of 1/4th share of land measuring 63 Kanal 3 Marla 2 Sarsai, as detailed in the headnote of the

plaint, copy whereof is Annexure P-1.

Besides the same, also sought declaration vis-a-vis, Will dated 15.09.2015 allegedly executed by Ranjeet (father of the petitioner-plaintiff), is actually not executed by deceased Ranjeet and has been fraudulently prepared by defendants No.1 and 2, in collusion and conspiracy with attesting witnesses of the Will and thus, asserted the Will to be null and void. Besides the same, also sought of relief of permanent injunction.

In pursuance of notice issued by the Court, the respondents, who are contesting defendants No.1 and 2, filed their written statement, wherein, besides taking preliminary objections, they had also further asserted that Ranjeet, their father had executed lawful and valid Will 15.09.2015, in favour of the answering respondents, in the presence of witnesses and the scribe and thus, there was denial of the petitioner-plaintiff having any right in the suit property.

Thereupon, issues were framed by the Court and the evidence was adduced by the parties. When the case was at the stage of rebuttal evidence and arguments, the subject application for reframing of the issues was filed, whereby, it was asserted that petitioner-plaintiff is claiming right in the properties of her deceased father Ranjeet, who died on 04.01.2016. She has also impugned the alleged Will dated 15.09.2015, which is allegedly executed in favour of defendants No.1 and 2 and has been set up by the defendants. In these circumstances, further, it has also been asserted that due execution of the Will and attestation of the same, as per provisions of Section 63 of the Indian Succession Act and Section 68 of the Indian Evidence Act, always lies upon the beneficiary of the Will/propounder of

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Will, who is required to prove the same. In the given circumstances, it is submitted that following issue, ought to have been framed, which reads as herein given:-

“Whether the Will dated 15.09.2015 was validly executed and attested by Ranjeet @ Jeet Ram in his sound state of mind? OPD”

However, in reply, the respondents-defendants resisted the claim for framing of the additional issue. In fact, it was stated that the petitioner-plaintiff, is well aware of the Will and she had also produced the copy of the Will along with the plaint and the same has been challenged, on the count of suit land being ancestral coparcenary property in the hands of Ranjeet, her father and on the ground of fraud and impersonation and Will has not been executed by Ranjeet in sound state of mind. It is submitted that petitioner-plaintiff was aware of the controversy and issue No.1 already framed, covers the entire controversy and the evidence has already been led by both the sides and if the plaintiff want to get to frame any other issue, then the following issue is required to be framed i.e. *“Whether Will dated 15.09.2015 is result of fraud and impersonation and has not been executed by Ranjit son of Mam Chand in his sound state of mind? OPP”* and a prayer was made for dismissal of the subject application.

After hearing counsel for the parties, vide impugned order, the said application was dismissed by learned trial Court.

Feeling aggrieved by the impugned order, the present revision petition ha been filed by the petitioner-plaintiff.

Learned counsel for the parties heard as well as record perused.

The facts germane to be noticed have also been reproduced in the earlier portion of the judgment. The questioned Will has been propounded by the respondents-defendants. While asserting her right, on the basis of the property in question, being ancestral property, the petitioner-plaintiff has also challenged the Will set up by the respondents-defendants.

After the completion of the pleadings, it is the duty of the Court to go through them, in a thorough and in the right perspective, so that issues on a question or particular law and fact, are framed. It is primary duty of the Court to frame an issue and if the Court is not discharging its obligation in framing of the proper issue, arising between the controversy raised by the parties, in their pleadings, then certainly the party affected, on account of this omission an appropriate application for framing/recasting of the issue, can always be filed.

In the light of the assertions made by rival parties, as already noticed aforesaid, it is the respondents-defendants, who have set up and assert their exclusive right to the suit property, on the basis of the Will dated 15.09.2015. Very true that petitioner-plaintiff in the suit had asserted about the said Will to be forged and fabricated. However, it should be noticed that onus to prove the execution of Will always lies upon the person propounding the same and he must satisfy the conscience of the Court that the instrument so propounded, is the last Will of a free and capable testator. However, in the case in hand, as evident from Annexure P-4, two issues, with regard to the declaration and permanent injunction have been framed, which reads as follows:-

“Whether the plaintiff is entitled for the relief of declaration, as prayed for?”

“Whether the plaintiff is entitled to the relief of permanent injunction, as prayed for?”

Besides the same, other issues have been framed, which are not necessary to be reproduced herein. However, no specific issue, with regard to the execution of Will, as such, has been framed. No doubt, as pointed out, learned trial Court has dismissed the application on the ground that this application has been filed at the fag end of the case, when it was at the stage of rebuttal evidence and arguments and moreover, when the parties were aware of the rival assertions and issue No.1, covers the entire matter, but however, it is not so, as the issue relating to declaration covering the issue, with regard to the execution of the Will and legality and validity of the same, shall be very hard hitting for the petitioner-plaintiff. The respondents-defendants being the propounder of the Will, always have the onus to prove the Will, which fact has been overlooked by learned trial Court, at the time of framing of the issue. Even, if there is such omission made, the same can be rectified, even at the stage of rebuttal evidence. In fact, in view of the material fact, vis-a-vis, manner of execution of the Will as averred and denied, therefore, an issue arises for determination of such assertion and denial and therefore, learned trial Court was obligated to frame the necessary issue for determination and for giving quietus to the lis.

Considering the pleadings of the parties, this Court finds that learned Trial Court fell in error, while dismissing the application for framing of the additional issue.

The civil rules of practice, calls for that every material proposition of fact and every proposition of law, which is affirmed by one side and denied by other, shall be made subject matter of a separate issue

and that every issue of fact, shall be so framed, as to indicate on whom the burden of proof lies. Given the same, as observed aforesaid, there are specific assertions with regard to the execution of Will and denial of the same.

In the given circumstances, the additional issue ought to be framed, even though, the application had been filed at belated stage. Consequently, the impugned order is hereby set aside and additional issue is framed, which reads as follows:-

“Whether Ranjeet @ Jeet Ram had executed legal and valid Will dated 15.09.2015, in favour of defendants No.1 and 2? OPD”

In pursuance of the framing of the aforesaid issue, the parties are directed to make appearance before learned trial Court, on the date fixed and on appearance of the parties, the Court concerned, shall give an opportunity to both the parties to lead evidence on the said additional issue and shall proceed further to decide the case expeditiously.

In view of the aforesaid terms, the present revision petition stands allowed.

March 06, 2024
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No