



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

134

CR-6086-2024 (O&M)
Date of decision: 21.10.2024

Prem Nath Sharma

...Petitioner

Versus

Rajiv Kumar Sharma and another

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present: Mr. S.S. Sarwara, Advocate for the petitioner.

VIKAS SURI, J.

1. Prayer in present petition under Article 227 of the Constitution of India filed by defendant-Prem Nath Sharma, who is father of the plaintiff/respondents, is for setting aside the order dated 06.09.2024 (Annexure P-6) passed by the learned Civil Judge (Junior Division), Ludhiana, whereby an application under Order 14 Rule 5 of the Code of Civil Procedure, 1908 (for short, 'CPC') for framing of additional issues moved by the defendant, was dismissed.

2. Briefly, the plaintiff/respondents filed a suit for separate possession by way of partition by metes and bounds of the suit property measuring 400 sq. yards situated in Sector 32-A, Urban Estate, Samrala Road, Ludhiana, and for permanent injunction restraining the defendant from creating any obstruction in ingress and egress of the plaintiffs in the suit property and further restraining the defendant from alienating in



any manner his share in the suit property by way of specific portion.

2.1 From the pleadings of the parties, the following issues were framed:

- “i) Whether the plaintiff is entitled for separate possession by way of partition by metes and bounds of suit property as prayed for ? OPP
- ii) Whether the plaintiff is entitled for permanent injunction as prayed for ? OPP
- iii) Whether the suit of the plaintiff is not maintainable ? OPD
- iv) Whether the suit of the plaintiffs is not properly valued for the purpose of court fee and jurisdiction ? OPD.
- v) Relief.”

2.2 The parties are inter se related, the plaintiffs are real brothers, and sons of the defendant. Parties led their evidence being alive to the question involved in the present case. The plaintiffs concluded their evidence in affirmative. After availing about 20 opportunities for leading evidence, the defendant moved an application under Order 14 Rule 5 CPC proposing casting of the following additional issues:

- “4(a) Whether the plaintiffs and defendant jointly purchased the property bearing no.3894 measuring 400 sq. yards situated at Sector-32-A, Urban Estate, Samrala Road, Ludhiana? OPP
- 4(b) Whether any funds were contributed by the plaintiffs in purchasing the suit property? OPP
- 4(c) Whether the property bearing no.B-29-89/4, Street no.5, Baba Mukand Singh Nagar, Daba Road, Ludhiana which is owned by the defendant was given to plaintiff no.2 vide family settlement? OPP



- 4(d) Whether any family settlement dated 24.02.2007 was executed between the parties as alleged by the plaintiffs? OPP
- 4(e) Whether plaintiff no.2 Sanjeev Kumar Sharma was ever in possession of property bearing no. B-29-89/4, Street no.5, Baba Mukand Singh Nagar, Daba Road, Ludhiana? OPP
- 4(f) Whether the plaintiffs made statement before the court proceedings in the court of Sh. Paramjit Singh, PCS cum SDM, Ludhiana in the case titled as "Prem Nath Versus Rajeev Sharma"? OP Parties
- 4(g) Whether any loan amount was repaid by the plaintiffs which was taken from Alahabad Bank, Link Road, Ludhiana? OPP”

2.3 The said application was contested and stands dismissed vide order dated 06.09.2024 passed by the trial Court, following the decisions in ***Bhagwani Bai (Deceased) through Legal Representatives vs. Bhiwani Ram and others***, 2021(4) R.C.R (Civil) 771 and ***Jaswant Singh vs. Sukhwinder Singh and another***, 2006(4) ICC 749.

3. Aggrieved by the aforesaid, the defendant has assailed the same before this Court by way of the present petition.

4. I have heard learned counsel for the petitioner and with his able assistance perused the record.

5. A perusal of the case file shows that issues in this case were framed on 24.07.2017. Thereafter, the plaintiffs concluded their evidence in affirmative on 20.10.2023 and the proceedings were deferred for defendant evidence. The defendant-petitioner after availing 20



opportunities for leading evidence, moved an application seeking framing of additional issues. The learned trial Court has observed that issue No.1 is omnibus issue that covers the entire controversy between the parties.

6. Learned counsel for the petitioner would contend that inasmuch as issue Nos.4(b) to 4(e) of the proposed issues are not covered under the issues already framed. However, he is not in a position to dispute that in the written statement filed on behalf of the defendant, it is not denied that the suit property was purchased in the names of the plaintiffs and the defendant, vide sale deed dated 11.12.2003. However, it has been qualified that the entire sale consideration was paid by the defendant-petitioner alone. It is conceded that the title in the suit property has been transferred by a registered document in the name of the parties in equal shares. Hence, it would be a matter of evidence to be led before the trial Court to determine the source of funds used for the said purchase and its effect, which has been held to be covered under issue No.1.

7. The argument raised with regard to property bearing No.B-XXIX- 89/4, Street No.5, Baba Mukand Singh Nagar, Daba Road, Ludhiana, and family settlement dated 24.02.2007 is only to be noticed and rejected at the outset. The said property or family settlement is not the subject matter of the present suit and would not constitute to be a



material issue arising in the present case for adjudication, as such. Learned counsel for the petitioner is also not in a position to dispute that the plaintiffs have led their evidence being fully aware of the pleadings and the respective stand taken by them, and the defendant has also been afforded due opportunity to cross-examine the plaintiffs' witnesses and to adduce defence evidence to rebut the same.

8. It would be apposite to refer to the provisions under Order 14 Rule 1 CPC, which are reproduced hereunder:

“1. Framing of issues.—(1) Issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other.

(2) Material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence.

(3) Each material proposition affirmed by one party and denied by the other shall form the subject of distinct issue.

(4) Issues are of two kinds:

(a) issues of fact,

(b) issues of law.

(5) At the first hearing of the suit the Court shall, after reading the plaint and the written statements if any, and 1[after examination under rule 2 of Order X and after hearing the parties or their pleaders], ascertain upon what material propositions of fact or of law the parties are at variance, and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to depend.



(6) Nothing is this rule requires the Court to frame and record issued where the defendant at the first hearing of the suit makes no defence.”

9. Order 14 Rule 1 provides that when a material proposition of fact or law is affirmed by one party and denied by the other, the Court is to frame a separate issue thereon. It is further provided that each material proposition affirmed by one party and denied by the other forms the subject matter of a distinct issue. However, it is to be noticed that while casting issues, the Courts are not framing the issues after taking into consideration the provisions of Order 14 CPC. Nonetheless, a coordinate bench in *Jaswant Singh's case* (supra) held that where the additional issues sought to be framed are already covered by existing issues settled between the parties, the application for framing of additional issues was rightly declined. The relevant portion of the said decision is reproduced hereunder:

“4. The undisputed facts are that the petitioner has filed a suit for declaration to the effect that the sale deed dated 1st June, 1995 allegedly executed by him in favour of the defendant-respondents in respect of the subject land is illegal, unlawful, null and void and is liable to be set aside as it was executed by an insane person under force, coercion, undue influence, duress and fraud. The petitioner has also sought consequential relief of permanent injunction to restrain the defendant/respondents from dispossessing him from the subject land.

5. On the basis of the pleadings of the parties,



learned trial Court has framed the following issues:

- "1. Whether the plaintiff is entitled to declaration as prayed for? OPP.
2. Whether the plaintiff is entitled to injunction as prayed for? OPP.
3. Whether the plaintiff has no locus standi to file the present suit? OPD.
4. Whether the suit is not maintainable ? OPD.
5. Whether the plaintiff is estopped by his own act and conduct from filing of the present suit ? OFD.
6. Relief.

6. The petitioner, however, moved an application under Order 14 Rule 5 CPC for framing the following two additional issue:

- "1. Whether the plaintiff is in possession of the suit property. If so, to what effect ? OPP.
2. Whether the plaintiff is a insane person of unsound mind. If so, to what effect ? OPP

7. As maybe noticed from Issue No. 1 which has already been framed by the learned trial Court and in terms whereof the fate of the declaration sought by the petitioner is to be decided, is exhaustive enough to include the "2nd issue" which the petitioner wants to be framed, namely, as to whether he is "insane person of unsound mind" or not. To be more precise, the petitioner would be at liberty to prove himself to be an insane person of unsound mind so as to seek the 'declaration' as prayed for in the suit.

8. Similarly, Issue No.2 already framed by the learned trial Court, namely, whether the petitioner is entitled to injunction as prayed for or not, covers his 1st proposed issue, i.e., whether the petitioner is in possession



of the subject property or not. It is only when the petitioner is found to be in possession of the subject land that the injunction can be granted in his favour.

9. In view of the above discussion, it appears that the learned trial Court has rightly declined the petitioner's application inasmuch as the additional issues sought to be framed by him are already covered by the existing issues settled between the parties. Consequently, I do not find any merit in this petition and dispose of the same with the clarifications aforementioned.

10. The parties are left to bear their own costs.”

10. It would also be gainful to refer to the observations made in

Bhagwani Bai's case (supra), which are extracted hereunder:

“6. As many as eleven issues were framed by the Trial Court on 23.05.2014. The order dated 23.05.2014 reveals that no other issues were pressed or claimed by the parties. At that point the plaintiff-petitioners were aware that the defendant-respondents had in their written statements denied the relationship of Vasanda Ram with the plaintiff-petitioners and the proforma defendant. Despite this knowledge, no other issues were pressed for or claimed by them on 23.05.2014. Thereafter, the parties i.e. the plaintiff-petitioners and the defendant-respondents have led their respective evidence. Now at the time of rebuttal evidence and final arguments the application (Annexure P-3) was filed for framing an additional issue. It is also to be noted that before filing this application (Annexure P-3) the plaintiff-petitioners had filed an application for production of certain documents which application was not pressed by them on 22.01.2021. The attempt on the part of the plaintiff-petitioners is to fill-up



the lacunae in their case and that too when the civil suit is at it's final stage. Framing of the additional issue now would necessarily also entail leading further evidence to prove the additional issue and would infact lead to a de-novo trial of the civil suit. The civil suit has been pending since 2008. Considering all these factors, this Court does not find any irregularity or illegality in the impugned order dated 03.02.2021 (Annexure P-6) passed by the Trial Court.

7. The judgments cited by learned counsel for the plaintiff-petitioners are distinguishable and not applicable to the facts and circumstances of the present case where the plaintiff-petitioners have been themselves been lethargic in pursuing their remedy and have woken up at the final stages of the civil suit. No doubt it is the duty of the Court to frame the proper issues but when the issues were framed in the civil suit on 23.05.2014, no party either pressed or claimed any other issue and participated in the proceedings thereafter without demur. The plaintiff-petitioners have not given any plausible explanation for not seeking framing of the additional issue earlier especially when they were all-along aware about the contents of the written statements filed by the defendant-respondents.”

11. In the present case, it is conceded that since the evidence of the plaintiffs was concluded on 20.10.2023, the defendant has already availed more than 20 opportunities for leading his evidence. The present application has been filed at a much belated stage, which is apparently to delay the proceedings.

12. The High Court has been consistently observing that the



trial Court while framing the issues do not take into consideration the provisions of Order 14 Rule 1 CPC. It is well settled principle of law that the order whereby the issues are cast must show application of mind and it is hoped that the Courts shall bear the aforesaid principle in consideration while framing the issues in future. In the case at hand, the title of the plaintiffs, which was acquired by way of sale deed dated 11.12.2003, has not been called in question by a counter claim.

13. In view of the aforesaid, the revision petition filed by the defendant-petitioner is dismissed.

October 21, 2024
sumit.k

(VIKAS SURI)
JUDGE

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