



2024:DHC:5476



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

% **Date of order: 11th July, 2024**

+ C.R.P. 204/2024 & CM APPL. 38394/2024 & CM APPL. 38395/2024 & CM APPL. 38396/2024
SUMAN SACHDEVA & ORS.Petitioners

Through: Mr. Sunil Kumar Chaturvedi,
Advocate

versus

JAGJIT KAUR & ANR.Respondents

Through: Mr. Sanyam Khetarpal, Mr. Nitai
Agarwal and Ms. Lisa Sankrit,
Advocates

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant revision petition under Section 115 read with Section 151 of the Code of Civil Procedure, 1908 has been filed on behalf of the petitioners/revisionists seeking the following reliefs:

“It is, therefore, most humbly and respectfully prayed before this Hon’ble Court may be pleased to allow this revision and set aside the impugned order dated 15.12.2023. And Direct the Ld. Trial Court to reframe the issues after properly completion of pleadings and giving equal opportunity to all the parties of suit. And/ or Pass such other or further order(s) as this Hon’ble Court deems fit in the facts and circumstances of the present case.”

2. The instant revision petition under Section 115 of Civil Procedure Code, 1908 (hereinafter “CPC”) has been filed by the petitioners seeking



2024:DHC:5476



quashing of the order dated 15th December, 2023 passed by the learned Senior Civil Judge-cum-Rent Controller, South East, Saket Court in the Civil Suit bearing CS NO. 1953/19.

3. The respondents are in the possession of the property bearing no. H-81, Lajpat Nagar- I, New Delhi (hereinafter “suit property”) after demise of their elder brother, Mr. Rakesh Kumar in the year 2015, who as per their knowledge was bachelor throughout his life.

4. The respondent No. 1 filed a civil suit CS SCJ/1953/2019 before the learned Trial Court alleging that she is the legally wedded wife of the Late Mr. Rakesh Kumar Berry and sought a declaration that she is the only Class-I Legal heir of Late Sh. Rakesh Kumar Berry.

5. Pursuant to the institution of the suit, the respondent no.1 filed an application for placing on record the additional documents and the said application was allowed, however, no additional documents were placed on record by respondent No.1. Thereafter, the learned Trial Court framed the issues on 15th May, 2023.

6. Aggrieved by the aforesaid order dated 15th May, 2023, the petitioners approached this Court by filing a Civil Revision Petition bearing no. C.R.P no. 252/2023, which was eventually withdrawn with a liberty to approach the learned Trial Court by way of filing an appropriate application.

7. The petitioner eventually filed an application under Order XIV Rule 5 r/w Section 151 of CPC before the learned Trial Court seeking framing of additional issues and the same was dismissed vide order dated 15th December 2023.



2024:DHC:5476



8. Aggrieved by the order dated 15th December, 2023, the petitioners filed the present revision petition.

9. Learned counsel appearing on behalf of the petitioners submitted that the learned Trial Court failed to take into consideration the contentions advanced on behalf of the petitioners.

10. It is submitted that the learned Trial Court failed to frame the main controversial issue in the present matter, i.e., whether respondent No. 1 is legally wedded wife of Late Sh. Rakesh Kumar Berry as the same is a key issue of dispute between the parties.

11. It is submitted that the learned Trial Court failed to take into account the issue pertaining to whether the Surviving Member Certificate was correctly issued after following due process, since the authenticity of the Surviving Member Certificate placed on record by respondent No. 1 was disputed by the petitioners.

12. It is submitted that the learned Trial Court failed to take into consideration the issue of whether the respondent no.1 is in possession of original property documents as respondent no. 1 has alleged that she in possession of the original documents pertaining to the suit property, however, the same has been denied by the petitioners in their written submissions as well as in their oral submissions.

13. It is submitted that the learned Trial Court failed to frame the issue of whether the documents submitted by the respondent no.1 have forged signatures of the Late Shri Rakesh Kumar Berry, since, the petitioners have contended before the learned Trial Court that the respondent No. 1 has



2024:DHC:5476



placed on record documents with forged signature of the Late Shri Rakesh Kumar Berry.

14. It is further submitted that the petitioners have raised the aforesaid contention in their written submissions as well as placed the authentic and genuine signature of Late Shri Rakesh Kumar Berry on record.

15. It is further submitted that the learned Trial Court erred in not taking on record, the Admission-Denial of documents by petitioners no. 1 and 2.

16. It is submitted that the impugned order is illegal on the grounds since by the order No. 49/DHC/Gaz/G-7/VI.E.2(A)/2023 of the learned Trial Court, the Presiding Officer was transferred from SCJ-cum-RC, South-East, Saket to CMM, South-East, Saket with immediate effect. Further, it was the role of the presiding officer to pronounce the judgments/orders on the date fixed or maximum within a period of 2-3 weeks thereof, notwithstanding the posting/transfer. However, the same was not done in the prescribed time period.

17. In view of the aforesaid submission, learned counsel for the petitioners submitted that the instant petition may be allowed and the relief as prayed for by the petitioners may be granted.

18. *Per Contra*, the learned counsel appearing on behalf of the respondents vehemently opposed the instant petition and submitted that the same is liable to be dismissed being devoid of any merits.

19. It is submitted that the petitioners' contentions are baseless as the learned Trial Court has exercised its jurisdiction in accordance with the settled legal propositions with regard to the provisions governing the power



to amend and strike out issues in the CPC and there is no infirmity in the impugned orders passed by it.

20. It is submitted that the learned Trial Court has taken into consideration the entire facts and circumstances and it reached to the conclusion only after such due consideration, whereby, it dismissed the petitioners' objections.

21. It is contended that the issues framed by the learned Trial Court has duly covered all the key point of disputes between the parties.

22. It is submitted that the learned Trial Court did not take the Admission-Denial filed by the petitioners on record and since it was not in the appropriate format as per CPC and there is no affidavit accompanying any such declaration of admission/denial of documents on behalf of the petitioners.

23. It is submitted that the learned Trial Court rightly observed that all the additional issues sought to be framed by the petitioners have already been covered by the issues framed by the learned Trial Court.

24. In view of the aforesaid submissions, the learned counsel for the respondents submitted that the instant revision petition is liable to be dismissed.

25. Heard learned counsel for the parties as well as perused the material on record.

26. It is the case of the petitioner that the learned Trial Court has failed to take into account the relevant issues such as if the respondent no. 1 is the legally wedded wife of the Late Mr. Rakesh Kumar Berry, the dispute pertaining to the Surviving Member Certificate, etc. and has not taken into



2024:DHC:5476



account the Admission-Denial of documents placed on record by the petitioners.

27. In rival submissions, it is submitted that the present revision petition is not maintainable as the learned Trial Court has exercised its jurisdiction in accordance with the settled legal propositions with regard to the provisions governing the power to amend and strike out, issues in the CPC and there is no infirmity in the impugned orders passed by it.

28. It is further submitted that learned Trial Court has taken into consideration the entire facts and circumstances and only after such due consideration, it reached the conclusion, whereby, it dismissed the petitioners' objections. It is further submitted by the respondents that the petitioners have failed to bring up any substantial question of law or any wrong exercise of the provisions of law by the learned Trial Court.

29. The respondents have placed strong reliance upon the observation made by the learned Trial Court and submitted that since all the additional issues have already been covered in the issues framed by the learned Trial Court earlier and therefore, the additional framing of issues is not required.

30. Therefore, this Court has to examine upon whether the impugned order passed by the learned Trial Court merits interference of this Court under Section 115 of CPC.

31. Before embarking upon the technical paraphernalia of the instant case, it is imperative to set out the scope of Order XIV Rule 5 of CPC under which the petitioners have filed an application for additional framing of



issues before this Court. The said provision has been reproduced for reference hereunder:

“[5. Power to amend and strike out, issues. — (1) The Court may at any time before passing a decree amend the issues or frame additional issues on such terms as it thinks fit, and all such amendments or additional issues as may be necessary for determining the matters in controversy between the parties shall be so made or framed.

(2) The Court may also, at any time before passing a decree, strike out any issues that appear to it to be wrongly framed or introduced.]”

32. As per the aforesaid provision, this Court is vested with the discretion to modify the existing issues framed by it or frame new issues in addition to the existing issues before passing of any decree for adjudication of dispute between the two parties. The Court also has the power to strike out any issue, before passing of any decree, which in the opinion of the Court is framed incorrectly and does not pertain to the controversy between the two parties.

33. The Courts can exercise power under the aforesaid provision either *suo motu* or in case there is an application filed by the party to the dispute.

34. The exercise of power in the aforesaid provision is controlled by the Order 14 Rule 3 of CPC, which stipulates that the Court has the powers to frame the issues from all or any of the materials placed on record by the parties such as the allegations of the parties in their pleadings or any answers to interrogatories, any document produced by the parties, any allegation made on oath by the parties or by any person present on their behalf or



statement made by either appearing for the parties and on examination of witnesses or inspection of documents.

35. On the basis of the pleading of the parties, the learned Trial Court on 15th May, 2023 framed the following issues:-

- “1) Whether the plaintiff is entitled to decree of declaration that the plaintiff is the only class-I legal heir of deceased Dr. Rakesh Kumar Berry S/o late Sit. Ram Lal Berry? OPP.*
- 2) Whether the plaintiff is entitled to decree of permanent injunction against defendants restraining them from interfering or creating any third party interest in the suit property i.e. H-1181, Lajpat Nagar-1, New Delhi and vice versa? OPP & OPD.*
- 3) Whether the appropriate court fees has not been paid by the plaintiff in the present suit OPD-3.*
- 4) Whether late Sit. Rakesh Kumar Berry never married during his lifetime and expired issueless? OPD-1 & 2.*
- 5) Whether late Sh. Rakesh Kumar Berry was survived by only class- 2 legal heirs i.e. deceased defendant no. 1, defendant no.2 & 3? OPD1&2*
- 6) Whether any oral family settlement took place during the lifetime of late Sit. Rakesh Kumar Berry with respect to the suit property by virtue of which deceased defendant no. 1 & defendant no.2 became owner of the suit property? OPD 1-2.*
- 7)Relief.”*

36. During the pendency of the suit, the defendant/petitioner herein filed an application on under Order XIV Rule 5 of the CPC, seeking framing of the following additional issues:-

- “1. Whether plaintiff got married to Late Sh. Rakesh Berry on 10.12.1988 according to Hindu Rites and Ceremony?*
- 2. Whether Surviving Member Certificate No. 90660000053235 was issued after following due process?*



3. *Whether signature of Late Shri Rakesh Kumar Berry was forged on document annexed as Annexure-A4 along with plaint by plaintiff? If yes, then by whom?*
4. *Whether counter-claimants/defendants are entitled for decree of declaration as per prayer clause A of counter claim?*
5. *Whether counter-claimants/defendants are entitled for decree of mandatory injunction as per prayer clause B of counter claim?*
6. *Whether counter claimants/defendants are entitled for decree of permanent injunction as per prayer clause C of counter claim?*
7. *Whether plaintiff has represented herself as an unmarried lady to the public at large in public domain documents?"*

37. At this juncture, this Court will advert to perusing the observations made by the learned Trial Court in the impugned order. The relevant part of the impugned order is reproduced herein below:

"7. Perusal of issue no.4 framed on 15.05.2023 shows that the said issue is identical to the additional issue no.1, sought to be framed by defendant no. 1 & 2 by way of the present application. Both the said issues pertain to the disputed question of fact in the present suit i.e. whether the plaintiff was actually married to Late Rakesh Berry or not. Thus, the additional issue no. 1 in the present application is nothing but a duplication of issue no.4 already framed on 15.05.2023.

8. The disputed question in the present suit relates to inheriting the property of Late Rakesh Kumar Berry. The plaintiff has claimed that she is entitled to inherit the same being the legally wedded wife of Late Rakesh Kumar Berry while the defendants have claimed that Late Rakesh Kumar Berry had never married and they are the only Class-II legal heirs of late Rakesh Kumar Berry with no surviving Class-I legal heir. The relevant issue for deciding this dispute between the parties i.e. issue no. 1, has



already been framed on 15.05.2023. The additional issue sought to be framed with respect to specific documents i.e. surviving member certificate of the plaintiff or documents purportedly signed by Late Rakesh Kumar Berry produced by the plaintiff along with plaint, is not required. Proving the abovesaid specific documents would entitle plaintiff to claim the relief sought in the present suit, for which specific issue no. 1 has already been framed on 15.05.2023. Furthermore, whether document i.e. surviving member certificate was issued after following due process of law or not, is not the dispute to be decided in the present suit. In case defendant no. 1 & 2 are aggrieved by the process followed in issuance of surviving member certificate, then that is a separate cause of action arising in favour of defendant no. 1 & 2, but the same cannot be adjudicated upon in the present matter. Hence, framing of additional issue no. 2 & 3 is not required in the present suit. 9. As already noted in separate order dated 24.02.2023, in the present case as well as counter claim bearing no. 1324121, titled as Mukesh Berry vs. Jagjit Kaur, trial of the present suit and the abovesaid counter claim has been dubbed together on the ground that issues to be decided and evidence to be led are materially and substantially the same. By way of the present application, defendant no. 1 & 2 are seeking framing of additional issues on the basis of the counter claim in the present matter. However, as it has already been noted that issues to be decided and evidence to be led in this suit and in counter claim are essentially the same, no separate framing of issues with respect to counter claim of defendant no. 1 & 2 appears to be necessary, moreso, when it has been specifically observed in order dated 24.02.2023 as below:

"17. At this stage, perusal of the present counter claim has shown that the reliefs being claimed are essentially akin to seeking dismissal of the suit filed by non-claimant no.1 bearing CS SCJ I953/19 titled as Jagit Kaur Vs. Mukesh Berry. If the suit of the non claimant



no. 1 is dismissed after trial, then automatically, the counter claimants shall be entitled to the reliefs claimed in the counter claim, without any further leading of evidence on their part. Therefore, essentially, it appears that issues to be framed and evidence to be led in the present counter claim shall be materially and substantially same as in the main suit hearing CS SCJ 1953/19 titled as Jagit Kaur Vs. Mukesh Berry .Hence, no fruitful purpose would be served by framing issues and recording evidence separately in the present counter claim and therefore, both the main suit bearing CS SCJ 1953/19 titled as Jagit Kaur Vs. Mukesh Berry and the present counter claim are directed to be clubbed together and tried together. The evidence led in main suit bearing CS SCJ 1953/19 titled as Jagit Kaur Vs. Mukesh Berry shall be read as part of the counter claim also. Accordingly, no further date is being given in the present counter claim".

10. Thus, in view of the above, framing of additional issues no. 4, 5 & 6 is not required in the present suit.

11. Framing of additional issue no.7 is also not required in the present suit as the said additional issue no.7 is merely a sub-issue of issue no. 1 already framed vide order dated 15.05.2023. Whether the plaintiff has projected herself as a married lady or not, will be relevant for deciding issue no. 1 framed on 15.05.2023 and the evidence to be adduced in this respect is covered within the said issue no.1.

12. Hence, in view of the above discussion, there is no merit in the present application and framing of any additional issue is not required. Accordingly, application under Order 14 Rule 5 CPC of defendant no. 1 "& 2 stands dismissed."

38. The learned Trial Court observed that the issue no. 4 framed on 15th May 2023 is identical to the additional issue no. 1 sought to be framed by



petitioners, since both issues pertain to the same question of fact i.e., whether the respondent no.1 was actually married to Late Sh. Rakesh Kumar Berry or not.

39. Pertaining to the additional issues no. 2 and 3 sought to be framed by petitioners i.e., surviving member certificate of the respondent no.1 or documents signed by the deceased produced by the respondent no.1 along with the plaint, the learned Trial Court held that the said issues are separate cause of action that cannot be adjudicated in the present matter. Therefore, the learned Trial Court held that framing of additional issues no. 2 and 3 is not required in the present suit.

40. With respect to additional issues no. 4, 5 & 6 sought to be framed by the petitioners pertaining to the counter claims, it was observed by the learned Trial Court, that *vide* order dated 24th February 2023, the trial of the present suit as well as the Counter-Claim bearing no. 1324/21 has been clubbed together since the issues to be decided and evidence to be led are materially and substantially the same. Therefore, the learned Trial Court held that no separate framing of issues with respect to counter-claim of petitioners are required.

41. With respect to additional issue no. 7 i.e., whether the respondent no. 1 has projected herself as a married lady or not, sought to be framed by the petitioner, the learned Trial Court observed that the said issue is not required to be framed as an additional issue since, it is merely a sub-issue of issue no. 1 already framed *vide* order dated 15th May 2023. Hence, the additional issue no. 7 will not be relevant for deciding issue no. 1 framed by the learned Trial



Court and the evidence to be adduced in this regard, is covered within the said issue no.1.

42. Now adverting to the adjudicating of the instant petition.

43. The learned Trial Court rightly held that additional issue no.1 sought to be framed by the petitioner i.e., *whether the respondent no. 1 was legally wedded wife of the deceased Late Sh. Rakesh Berry on 10th December, 1988 according to Hindu Rites and Ceremony* was identical to issue no. 4 already framed *vide* order dated 15th May 2023 i.e., *Whether late Mr. Rakesh Kumar Berry never married during his lifetime and expired issueless. Accordingly, this Court is of the view that the additional issue sought to be framed is similar to issue already framed by this Court and both pertains to whether the respondent no. 1 is the wife of the deceased Mr. Rakesh Kumar Berry. Accordingly, this Court is of the view that the additional issue no.1 sought to be framed by the petitioners is similar to issue no. 4 already framed by this Court.*

44. With respect to additional issues no. 2 and 3 sought to be framed by the petitioners i.e., *whether Surviving Member Certificate No. 90660000053235 was issued after following due process and whether signature of Late Shri Rakesh Kumar Berry was forged on document annexed as Annexure-A4 along with plaint by plaintiff? If yes, then by whom, respectively, the learned Trial Court rightly held that the aforesaid issues have a separate cause of action which cannot be adjudicated in the present matter. Since, the dispute between the parties is with respect to the declaration of legal heir of the deceased.*



45. Accordingly, this Court is of view that the learned Trial Court has rightly held that the since, the issues regarding the Succession Certificate is ancillary to the disputes in the said Civil Suit, no issues can be framed regarding the same.

46. With respect to additional issues 4, 5, and 6 sought to be framed by the petitioners i.e., *whether counter-claimants/defendants are entitled for decree of declaration as per prayer clause A of counter claim, whether counter-claimants/defendants are entitled for decree of mandatory injunction as per prayer clause B of counter claim and whether counter claimants/defendants are entitled for decree of permanent injunction as per prayer clause C of counter claim* respectively, the learned Trial Court rightly held that since as per order dated 24th February 2023, the trial of the present suit and the counter-claim bearing no. 1324/21 has been clubbed together, the issues to be decided and evidence to be led are materially and substantially the same, hence no separate framing of issues relating to counter-claim is necessary.

47. This Court is of the view that with respect to additional issue no. 7 sought to be framed by the petitioners i.e., *whether plaintiff has represented herself as an unmarried lady to the public at large in public domain documents*, the learned Trial Court rightly held that the said issue is merely a sub-issue of issue 1 already framed vide order dated 15th May 2023 i.e., *whether the plaintiff is entitled to decree of declaration that the plaintiff is the only class-I legal heir of deceased Dr. Rakesh Kumar Berry S/o late Sit. Ram Lal Berry*, since both pertains to whether the respondent no.1 is a legal



2024:DHC:5476



heir of the deceased Rakesh Berry. Accordingly, the learned Trial Court rightly held that additional issue no. 7 sought to be framed by the petitioners is already covered under the ambit of issue no. 1 framed by the learned Trial Court.

48. In view of the aforesaid observations, this Court is of the view that the learned Trial Court has rightly framed issues in the Civil Suit, covering all the key point of disputes between the parties. The learned Trial Court rightly held that the issues put forth by the petitioners for additional framing of issues were mere duplication, thereby not relevant to the present matter.

49. Accordingly, it is held that the learned Trial Court has exercised its jurisdiction in accordance with the law and rightly dismissed the petitioner's application.

50. In view of the aforesaid discussion, the impugned order dated 15th December 2023 passed by the learned Senior Civil Judge-cum-Rent Controller, South East, Saket Court in the Civil Suit bearing CS No. 1953/19 is upheld.

51. Accordingly, the instant petition along with the pending applications, stands dismissed.

52. The order to be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

JULY 11, 2024
gs/db/av

Click here to check corrigendum, if any