

247 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

2025:PHHC:124420



CR-6940-2024 (O&M)
DATE OF DECISION : 10.09.2025

RAJEEV JAWA ... PETITIONER
V/S
SONIKA BOHRA AND ANOTHER ... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE PARMOD GOYAL

Present: Mr. Shailendra Sharma, Advocate for the petitioner.

Ms. Rashi Shahrawat, Advocate for respondent No.1.

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PARMOD GOYAL, J. (ORAL)

Petitioner has challenged the impugned order dated 21.08.2024 passed by the learned Civil Judge (Junior Division), Gurugram whereby application under Order 14 Rule 5 read with Section 151 CPC for framing of issues preferred by plaintiff-petitioner was dismissed.

2. The facts are not much in dispute. In the present case, plaintiff-petitioner had filed a suit for declaration and permanent injunction. Notice was issued. Defendant duly appeared and filed her written statement and counter-claim. On the basis of pleadings of the parties, vide order dated 03.05.2023 following issues were framed:-

“1) Whether any oral family settlement had taken place as alleged by plaintiff? OPP

2) Whether registered Will bearing vasika No.1271 dated 04.01.2013 was superseded by latter Will dated 24.01.2021 if any? OPP

3) Whether Will dated 21.01.2021 is genuine and plaintiff is owner in possession of the aforesaid suit property on the basis of registered Will? OPP

4) Whether suit is not maintainable ? OPD

5) Whether the Will dated 24.01.2021 is illegal null and void and surrounded with suspicious circumstances ? OPD

6) Whether the Will bearing Vasika no. 1271 dated 04.01.2013 is genuine and free from any suspicion. OPD

8) Whether plaintiff has concealed material facts from the court ? OPD

9) Whether plaintiff has no locus to file the present suit ? OPD

10) Relief.”

3. Subsequently, on 14.02.2024, additional issue No.6A and 6B were framed, which are as under:-

“6A Whether the counter claimant is absolute owner in possession of the suit property on the basis of registered Will dated 01.04.2013? OCC

6B Whether the counter claim is not maintainable? OPP”

4. The main contention of learned counsel for plaintiff-petitioner is that actually issues should have been framed only after pleadings are complete and since reply to counter-claim was filed by plaintiff-petitioner only on 18.04.2024, therefore, issues framed earlier needed to be reframed. I find merit to this extent that the learned trial Court should have considered framing of issues only after completion of pleadings of parties.

5. It is the case of plaintiff-petitioner that following four issues ought to have been framed by the learned Court of First Instance on completion of pleadings of the parties on 18.04.2024.

“I. Whether the counter claim is liable to be dismissed for deficient court fee as the plaintiff is required to pay the ad valorem court fee? OPD/COUNTER CLAIMANT ?

II. Whether the counter claim has not been signed and verified by the defendant as she was at all present in Gurugram/India on dated 12th April 2023? OPD/COUNTER CLAIMANT ?

III. Whether the defendant had paid full and final consideration for execution of the sale deed as claimed in Para 3 of the counter claim? OPD/COUNTER CLAIMANT?

IV. Whether the defendant /counter claimant has terminated the licence of the plaintiff qua the suit property if so to what effect? OPD/COUNTER CLAIMANT ?

6. On consideration, I find that abovenoted proposed issues no. 1 and 2 raised by plaintiff-petitioner are already covered by issue No. 6(B) i.e. “whether counter claim is maintainable or not?” The plaintiff is free to show the maintainability of counter-claim on all the grounds taken by him in his reply to counter-claim. He can show to the Court whether counter-claim is not maintainable for non-payment of Court fee or as it was not properly verified. Therefore, no fresh issues are required to be framed as proposed by plaintiff-petitioner.

7. The proposed 3rd issue “whether the defendant had paid full and final consideration for execution of sale deed” does not arise from the pleadings of the parties. Admittedly, even from plaint it is clearly made out from the assertions made by plaintiff-petitioner that the sale deed was duly executed in favour of his mother and defendant no. 1 and thereafter, mother had executed two Wills, first in year 2013 and second, in year 2021. Plaintiff-petitioner is claiming his rights through 2nd Will executed by her mother in year 2021. Therefore, there is no relief sought by petitioner seeking declaration that sale deed executed in favour of his mother and

defendant no.1 was not binding upon him. Therefore, this issue does not arise from the pleadings of the parties and not required to be framed.

8. Fourth issue proposed by learned counsel for the plaintiff-petitioner is that defendant be asked to prove or show that he had terminated the licence qua suit property. Perusal of reply filed by plaintiff-petitioner goes to show that he has denied the creation of licence itself. Admittedly, both plaintiff and defendant are real brother and sister. The suit property as per the case of plaintiff himself was purchased in the name of plaintiff and defendant's mother and in the name of defendant no. 1 to the extent of 50% each. However, I find merit in the contention of learned counsel for plaintiff-petitioner that since counter-claimant defendant had pleaded licence, therefore, in order to succeed in her counter-claim, she had to prove existence of licence as well as its termination. There is no issue on this aspect of the case.

9. The petition is, accordingly, disposed of with direction to the learned trial Court to consider framing of proposed issue no. 4 in the light of above observations, keeping in view the pleadings of the parties. Parties are directed to appear before the Court below on the date already fixed.

10.09.2025

Janki

**(PARMOD GOYAL)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No