

HIGH COURT OF DELHI**Bench: Hon'ble Ms. Justice Shalinder Kaur****Date of Decision: 14th May 2024**

CIVIL MISCELLANEOUS MAIN JURISDICTION

CM(M) 1926/2023

CM APPL. 60265/2023 — stay

RITU KUMAR ...Petitioner**VERSUS****TARUN CHANDER MALIK & ANR ...Respondents****Legislation:**

Article 227 of the Constitution of India

Order XIV Rule 5 of the Code of Civil Procedure, 1908 (CPC)

Order XI Rule 14 of the CPC

Section 151 of the CPC

Order XII Rule 6 of the CPC

Subject: Civil miscellaneous petition challenging the suo moto deletion of issues by the Additional District Judge and the disallowance of cross-examination of the respondent on new documents produced.

Headnotes:

Civil Procedure – Power to Amend and Strike Out Issues – Petition challenging the trial court's order deleting certain issues in a civil suit and denying further cross-examination – High Court examined the validity of the trial court's suo moto deletion of issues and refusal to recall a witness for cross-examination on additional documents – Court reinstated two issues considering their relevance to the dispute but upheld the denial of further cross-examination – Jurisdiction under Article 227 explained as supervisory, not appellate [Paras 1-35].

Adoption and Property Dispute – Suit for possession and mesne profits of property involving complex family and adoption claims – Petitioner contested

the suit claiming oral family settlement and disputed the adoption of respondent – Trial court deleted issues related to the adoption and nature of the property – High Court reinstated the issues concerning adoption and property characterization due to their critical role in resolving the dispute [Paras 1-5, 28-31].

Evidentiary Procedure – Application for further cross-examination denied – Trial court refused to recall respondent for cross-examination on new documents related to a will and probate order – High Court upheld the decision, finding no relevance or necessity for additional cross-examination on those documents [Paras 3, 13, 32-33].

Decision – Petition Partially Allowed – Held – The impugned order was set aside to the extent of deleting issue nos. 4 and 5, as they were deemed relevant to the case – The application for recalling the respondent for further cross-examination was rightly dismissed – High Court emphasized the limited scope of Article 227 jurisdiction for correcting grave errors rather than reassessing factual matters [Para 34-35].

Referred Cases:

- K.K. Velusamy vs. N. Palanisamy (2011) 11 SCC 275
- Aishani Chandna Mehra vs. Rajesh Chandna & Ors [CS(OS) 235/2018 decided on 08.01.2019]
- Moturu Nalini Kanth vs. Gainedi Kaliprasad (dead) through LRs [MANU/SC/1240/2023]

Representing Advocates:

Mr. Sandeep Sharma, Mr. Anirmesh Rastogi, and Ms. Kanchan Semwal for the petitioner

Mr. Jai Sahai Endlaw and Mr. Zubin M. John for the respondents

J U D G M E N T

1. This petition filed under Article 227 of the Constitution of India impugns the order dated 05.09.2023 passed by the court of the Additional District Judge-01, Patiala House Courts, New Delhi (hereinafter —ADJII) in CS No.442/2014

in the suit titled as —Tarun Chander Malik vs Ritu Kumarll. The petitioner is the defendant no.1, the respondent no.1 is the plaintiff & respondent no. 2 is the defendant no. 2 before the learned ADJ in the aforementioned suit.

2. The petitioner is aggrieved that vide the impugned order dated 05.09.2023, the learned ADJ has suo moto deleted issues no.4, 5 & 7 which were originally framed by the learned trial court vide order dated 14.05.2015. The deleted issues are as follows:

“The issue no 4: "Whether the suit property is self-acquired property of the deceased Sh. Tara Chand Malik or HUF property? OPD”

Issue no 5: "Whether the plaintiff was adopted son of late Sh. Tara Chand Malik and his wife Smt. Bhagwanti Devi? OPP”

Issue no 7: "Whether the suit is bad for misjoinder of necessary parties? OPD”

3. The petitioner is further aggrieved as his application dated 31.05.2023 under Section 151 of the Code of Civil Procedure, 1908 (hereinafter —CPCII), to recall the plaintiff/respondent no.1 for crossexamination qua the new documents produced on the direction of the court by the respondent no. 1, was disallowed.
4. One may start the recital of the facts with the suit for possession filed by respondent no. 1 for recovery of possession of suit property admeasuring 7246 sq. ft. at 68, Janpath, New Delhi – 110001 (hereinafter referred as ‘_suit property’), which is in the possession of the petitioner. Respondent no. 1 averred that petitioner is the biological eldersister of the respondent no. 1 and respondent no. 2 is the husband of petitioner who is a proforma party. Respondent no. 1 at the age of about 1.5 years was given in adoption to late Sh. Tara Chand Malik and his wife Smt. Bhagwanti, after the adoption ceremony and on execution of duly registered deed of adoption dated 04.02.1968. Late Sh. Tara Chand Malik was the paternal uncle of late Sh. Ram Nath Malik, father of respondent no. 1 and petitioner, who owned the suit property and bequeathed it in favour of respondent no. 1 vide Will dated 16.08.1968 qua which probate certificate dated 02/28.08.1969 was granted. Sh. T.C. Malik was issueless. A conveyance deed dated 08.02.2006 based on the aforementioned Will was executed, relying upon the said conveyance deed, respondent no. 1 claimed ownership of the suit property. The petitioner

- and respondent no. 2 (—defendantsII) were introduced in the suit property as licensee when the relationship between the parties was cordial. Subsequently, the relationship became bitter, thereupon a notice dated 24.06.2008 demanding possession of suit property was sent and duly served, however, the defendants did not vacate the suit property and on the basis of aforesaid, respondent no. 1 filed the present civil suit bearing no. 442/2014 in October, 2014 for recovery of possession and mesne profits of the suit property.
5. The petitioner contested the civil suit and filed the written statement. The biological relationship between respondent no. 1 and petitioner was not disputed, however, the petitioner refuted that respondent no. 1 was given in adoption to late Sh. Tara Chand Malik. It is the case of the petitioner that one room in the suit property is in possession of the petitioner being the owner, in accordance with the oral family settlement arrived in the year 1993. Vide this oral family settlement, all five members of the joint Hindu family were entitled to an equal share in the immovable as well as the moveable properties held by Sh. Ram Nath Malik. The petitioner by way of written statement prayed for dismissal of the suit while also seeking directions for respondent no. 1 to implement the oral family settlement of 1993.
6. It is to be noted, as per the petitioner, the biological father of petitioner and respondent no. 1 held joint family properties as under (which were earlier held by Late Sh. Tara Chand Malik and late Smt. Bhagwanti) :-
- “(a) 68, Janpath, New Delhi 110001 in the name of his elder son Sh. Tarun Chander Malik, the plaintiff.*
- (b) 15, Babar Lane, New Delhi 110001 in the name of his elder son Sh. Tarun Chander Malik, the plaintiff.*
- (c) 60, Jor Bagh, New Delhi in the name of his younger son Sh. Rajiv Malik.*
- (d) 60/18, Ramjas Road, Karol Bagh, New Delhi 110005. (e) 60/19, Ramjas Road, Karol Bagh, New Delhi 110005, in which the defendant no. 1 is residing and possessing with her family members since Mar 1988.*
- (f) 61/27, Ramjas Road, Karol Bagh, New Delhi 110005*
- (g) 61/31, Ramjas Road, Karol Bagh, New Delhi 110005 (since sold)”*
7. The properties at Serial No. (d), (e) & (f) are shown to be held by an unregistered trust titled *“Tara Chand Malik Charitable Trust”*. The petitioner while questioning the adoption of respondent no. 1 by late Sh. Tara Chand

Malik urged that late Sh. Ram Nath Malik continued to represent himself as father of respondent no. 1. He also challenged the authenticity of Will of late Sh. Tara Chand Malik for various reasons and stated that by virtue of oral family settlement, he came into possession of the suit property. The petitioner has pleaded that in pursuance to oral family settlement, he was introduced in family firm namely M/s Malik & Associates on salary-cum-profit basis. She pleaded that some valuable equity shares held by late Sh. Ram Nath Malik, late Smt. Kanta Malik and Sh. Rajeev Malik were also transferred to respondent no. 1 and H. No. 60/19, Ramjas Road, Karol Bagh, New Delhi was to be transferred to the petitioner.

8. Once the replication was filed by the respondents, 11 issues were framed on the basis of pleadings of the parties. Thereupon, respondent no. 1 filed his affidavit by way of evidence and was cross-examined by petitioner on various dates.

9. The respondent no.1 closed plaintiff evidence on 06.07.2018 after only examining himself, following which the petitioner moved an application dated 25.10.2018 under Order XI Rule 14 of the CPC for the production of additional documents which was respondent no. 1 admitted he could produce. On 13.05.2019, the learned Trial Court partly allowed the petitioner's application for the production of additional documents which are as follows:

(i) *Will of Smt. Bhagwanti purportedly executed in 1983, the alleged adoptive mother of respondent no.1.*

(ii) *The Probate order dated 02.08.1969 of alleged Will of Tara Chand Malik, the alleged adoptive father of respondent no.1.* 10. The petitioner, thereafter, on the basis of the admissions made by respondent no.1 in his pleadings as well as in his cross examination, filed an application dated 24.09.2021 under Order XII Rule 6 read with Section 151 of the CPC for passing a judgement on the issue no.5. The learned Trial Court on 23.07.2022 while dismissing the application of the petitioner, observed that the application was based on evidence which had already been adduced and was still a triable issue which put it out of the ambit of Order XII Rule 6 of the CPC. The matter was then referred for mediation, which proved unsuccessful and it was returned on 31.05.2023.

11. Subsequent thereto, both the petitioner and the respondent no.1 moved applications under Section 151 of the CPC and both the applications

were listed for arguments on 05.09.2023. The petitioner vide his application dated 31.05.2023 under Section 151 of the CPC sought to recall the respondent no.1 for further cross-examination qua the additional documents produced by the respondent no.1 pursuant to the order dated 13.05.2019. On the other hand, the respondents had filed an application dated 21.05.2023 for closing the right of the petitioner to file its affidavit by way of evidence as well as for striking off his defence.

12. Vide the impugned order dated 05.09.2023, the learned ADJ struck off issues nos. 4, 5 and 7 and held that:

“In the considered view of this Court irrespective of adoption, once a Will was set up by the plaintiff on which probate has been granted and the Will dated 16.08.1968 and Probate Certificate dated 2nd / 28th August: 1969 remained unchallenged, it is not of any relevance to venture into determination of the question of adoption. Further, as the Deed of Conveyance has not been challenged by availing appropriate legal recourse, it is also not conducive for the present trial to adjudicate on issue whether the suit property is a self-acquired property of Late Sh. Tara Chand Malik or an HUF property. These questions would have been of relevance if the defendants had resorted to the appropriate legal recourse within limitation challenging the documents upon which the plaintiff now premised his case. Hence, even the issue that the suit is bad for mis-joinder of necessary parties is extraneous to the controversy before this Court. This Court is of the view that venturing into, adjudication of issue no. 4, 5 and 7 are therefore, only dilatory and wastage of precious judicial time. It is also to be borne in mind that no counterclaim has also been filed. Therefore, issues no. 4, 5 and 7 are struck off”

13. The learned ADJ, with regard to the application of the petitioner under Section 151 of the CPC, seeking to recall respondent no.1 for further cross examination, dismissed the same and held as under:

“In the considered view of this Court, finding on adoption for reasons already mentioned above would have no bearing on the controversy till the transaction of issuance of Conveyance Deed dated 08.02.2006 had been challenged, as per law. Even otherwise, the plaintiff not being a witness or an author of the documents is not competent to depose on

them. Allowing the application would delay trial. Hence, it stands dismissed”

14. Further, the application moved by the respondent no.1 under Section 151 of the CPC for closing defendants evidence was disposed off by the learned ADJ, while granting 3 effective opportunities, subject to payment of costs imposed earlier.

Submissions of the Petitioner:

15. Mr. Sandeep Sharma, the learned counsel for Petitioner submitted that the learned ADJ passed the impugned order, deleting the previously framed issues which were framed under identical facts and circumstances of the case without following the prescribed procedure under Order XIV Rule 5 of the CPC. The deletion of these issues, primarily based on irrational findings have led to the rejection of the petitioner’s application under Section 151 of the CPC. Moreso, because of impugned order, the petitioner has been rendered practically defenceless by deletion of the pivotal issues forming the backbone of the dispute involving determination of rights of the parties.

16. The Learned Counsel contended that the matter of adoption serves as the corner stone of respondent no.1’s suit, and the dispute between the parties cannot be resolved unless the court adjudicates on the adoption issue. The petitioner has asserted that the denial of the opportunity to present evidence regarding the issues is resulting in significant prejudice to the petitioner’s interests and is impeding the equitable adjudication of the matter between the parties.

17. The Learned Counsel further argued that it is an established legal principle that probate is granted without delving into the specific contents of the Will. The Probate Court lacks jurisdiction to decide matters pertaining to the ownership of the properties in question or to determine whether said properties, as bequeathed in the Will, were ancestral assets or personal acquisitions of the testator. Additionally, the Counsel asserted that a conveyance deed holds no relevance in establishing the validity of an adoption or determining ownership rights. Moreso, while passing the order allowing the application of petitioner under Order XI Rule 14 CPC, the learned Trial Court observed that Will of Smt. Bhagwati is necessary to decide the issue of adoption. Reliance has been placed on —***Aishani Chandna Mehra***

vs. Rajesh Chandna & Ors” [CS(OS) 235/2018 decided on 08.01.2019] and —**Moturu Nalini Kanth vs. Gainedi Kaliprasad (dead) through LRs”** [MANU/SC/1240/2023].

18. To conclude the arguments, Mr. Sharma contended that two important documents have come on record as per the directions of the learned Trial Court thus; the petitioner has a right to cross examine PW-1 to confirm these documents for which he should be granted an opportunity.

Submissions of the respondents

19. Confuting the submissions, Mr. Jai Sahai Endlaw raised the plea that the impugned order is justified and cannot be faulted with as the learned ADJ has exercised its jurisdiction within the framework of law by suo moto deleting the issues. The moment it came to the notice of the learned ADJ that certain issues were superfluous and would waste the precious time of the court by letting parties to lead evidence, it suo moto deleted the said issues. The learned counsel submitted that it is not disputed that the court can Suo moto delete or add issues.

20. The Learned Counsel for the respondents further placed reliance on **“K.K Velusamy vs. N Palanisamy” (2011) 11 SCC 275**, where the precise nature and scope of Section 151 of the CPC was dealt with and clarified.

21. Mr. Jai Sahai Endlaw further controverted the argument of the petitioner that PW1 is to be confronted with the additional documents. It is submitted that the petitioner had raised a limited plea to production of documents which has been allowed by the learned Trial Court but these documents could not be put to PW1 as the respondents never had a chance to rebut the documents and if a further cross examination of PW1 is permitted, it would prejudice the claims of the respondents.

Analysis & conclusion

22. By preferring the present petition, the petitioner has invoked the jurisdiction of this Court under Article 227 of the Constitution of India which delineates a crucial aspect of judicial oversight over subordinate courts and tribunals, as interpreted through various legal precedents. The Article confers upon the High Court’s the power of superintendence to ensure that the subordinate bodies operate within the confines of their authority. This power is not meant for mere error correction but rather to rectify grave violations of

law or fundamental principles of justice. Courts exercising supervisory jurisdiction under Article 227 must refrain from functioning as appellate bodies. The High Court's intervention is warranted only in instances of serious dereliction of duty or when a finding is so blatantly erroneous that it results in a miscarriage of justice. The scope of this jurisdiction prohibits the High Court from delving into factual assessments or re-evaluating evidence unless there is a clear departure from legal principles or a blatant abuse of power. The essence of Article 227 lies not in reviewing the correctness of orders but in ensuring that the exercise of jurisdiction by subordinate courts aligns with legal norms, thus upholding the integrity of the judicial process.

23. It is needless to say that the impugned order is to be tested in realm of Article 227. Before adverting to the submissions of the parties, factual background and validity of impugned order, it is necessary to ascertain court's power to frame issues under Code of Civil Procedure.

24. The "framing of issues" refers to the process where the presiding judge in a civil trial formulates specific points or questions based on the pleadings and documents submitted by the parties involved. This stage is crucial as it helps define the scope and direction of the trial proceedings. The judge's role is to meticulously review the allegations, defences, and relevant evidence presented by each party before determining the precise issues that need to be addressed and resolved during the trial. The expectation placed on court during this stage is that it exercises due diligence and careful consideration in analysing the pleadings and documents. By doing so, it ensures that the issues framed accurately reflect the disputed aspects of the case and encompass all pertinent legal and factual matters requiring adjudication. This thorough examination helps in promoting fairness, clarity, and efficiency in the trial process. In essence, the framing of issues serves as a roadmap for the trial, guiding the parties and the court in focusing their arguments, presenting evidence, and ultimately reaching a just resolution. It is a pivotal procedural step aimed at facilitating a structured and meaningful adjudication of the dispute before the court.

25. Order XIV Rule 5 of the CPC delineates power of the court to amend and strike out issues. A plain reading of the provision makes it clear that a court can at any point of time before passing a decree, amend issues and permits the court to strike out any issue. The issues can be recasted as the court deems fit and as may be necessary for determining the controversy between the parties.

26. The grievance of the petitioner is that the learned Trial Court had already exercised its jurisdiction on 14.05.2015, when the issues came to be framed by it. Neither side had raised any objection to the issues which were framed and the evidence has been led by the respondents on the said issues. It was submitted that the learned Trial Court erred in deleting the issues without any basis which is impermissible in law.

27. Therefore, in this petition first, it is required to be adjudicated whether the exercise of suo moto deletion of issues was essential or not.

28. It is clear from a reading of the pleadings the plaint proceeds with the recital that the respondent no.1 is the adoptive son of Mr. Tara Chand Malik, which fact is disputed by the petitioner in the written statement by averring that the respondent no. 1 not is the adoptive son but the father of the petitioner and respondent no.1, Sh. Ram Nath Malik was adopted by Mr. Tara Chand Malik and Smt. Bhagwati at the age of 8 years. Sh. Ram Nath Malik severed all old ties with his natural family and acquired new ties in adoptive family. The adoptive parents of Sh. Ran Nath Malik got him married to Smt. Kanta who were blessed with three children i.e., petitioner, respondent no. 1 and Sh. Tarun Chander Malik and the entire family resided together at 15 Babar Lane, New Delhi.

29. It is further the defence set up by the petitioner that the estate of Mr. Tara Chand Malik devolved upon the parents of the petitioner and respondent no.1 and their other sibling in equal shares on the basis of an oral family settlement. So in view of the above, the issue no. 5 is a relevant issue and the onus is on the respondent to prove the same.

30. Now coming to issue no. 4, it is the defence set up by the petitioner in the suit that estate of the Mr. Tara Chand Malik was a joint Hindu Family property, including the suit property for which oral Family Settlement had taken place in 1993. Moreso, it is pleaded by respondent no. 1 in the suit that cause of action for the suit arose in favour of respondent no. 1 and against the petitioner and respondent no. 2 when they and in particular the petitioner started asserting her rights in the estate of respondent no. 1. Accordingly, with regard to the issue no. 4, it is a relevant issue as the onus to prove the issue is on the petitioner.

31. However, with respect to the issue no. 7 that the suit being bad for mis-joinder of necessary parties is an irrelevant issue as there is no specific averment of the petitioner as to which of the parties is not a necessary party.

Hence, issue no. 7 is not to be restored. Accordingly, the impugned order is set aside to the extent of deleting the issue nos. 4 and 5, as they are relevant issues. In view of the above, issue nos. 4 and 5 are restored.

32. Coming to the next grievance of the petitioner that he has not been permitted to recall respondent no, 1 for further cross examination in respect of the additional documents i.e., (i) the Will of Smt. Bhagwati purportedly executed in the year 1988 and (ii) the probate order dated 02.08.1969 of the alleged Will of Mr. Tara Chand Malik. It is necessary to point out that the said additional documents have been brought on record as produced by respondent no. 1 after seeking leave of the court by the petitioner. The petitioner seeks permission to put the said document to respondent no. 1 during cross examination. Needless to say that Will of Smt. Bhagwanti is not in issue before the learned Trial Court. The relevancy of the Will to be put to respondent no. 1 has not been explained by the petitioner. Thus, no fruitful purpose would be served by seeking an explanation about the Will of Smt. Bhagwanti from respondent no. 1.

33. The other document is a probate order dated 02.08.1969, as the Will already stands probated, the consequences of the probate of Will would be considered by court at an appropriate stage for which further evidence of the parties is not required. Hence, there is no infirmity in the order passed by learned Trial Court while dismissing the application of petitioner under Section 151 CPC to re-summon respondent no. 1 for further cross-examination.

34. Having considered the above, the impugned order to the extent of issues nos. 4 & 5 having been deleted by the learned Trial Court is set aside. The judgments relied upon by the parties are decided on their own facts and are distinguishable from the facts of the present case.

35. Consequently, the petition along with pending application is disposed of.

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