

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

RSA No. 6/2023

Govind Ram

.....Appellant(s)/Petitioner(s)

Through: Mr. Sunil Sethi, Sr. Adv. with
Ms. Veenu Gupta, Adv.

vs

Vidhya Devi and others

..... Respondent(s)

Through: Mr. Dharam Paul, Advocate for Nos. 1 to 4

Coram: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

ORDER
05.12.2024

ORAL:

1. In the instant civil second appeal, the appellant herein has challenged judgment and decree dated 27.03.2023 passed by the court of Principal District Judge, Kathua (for short the appellate court) in case titled as **“Govind Ram vs. Vidhya Devi and others”** as also the judgment and decree dated 31.08.2019 passed by the court of Sub Judge/CJM, Kathua (for short the trial court) in case titled as **“Govind Ram vs. Sat Pal and others”**.
2. Facts giving rise of the filing of the instant appeal would reveal that the plaintiff/appellant herein had filed a suit for permanent injunction initially against one Sat Pal, the predecessor-in-interest of the respondents 1 to 4 herein as also the proforma respondents 5 and 6 herein *qua* the land measuring 2 kanals covered under survey No. 37/25 situated at Village Rakh Sarkar Plai, Tehsil and District Kathua, claimed to be owned and

possessed by the plaintiff/appellant herein, stating therein the said suit that out of the said land, 5 marlas each came to be agreed to be sold by him to the proforma respondents 5 and 6 herein in terms of agreements to sell dated 10.02.2007 and 15.02.2007 respectively, stating further that the defendant 1 (predecessor-in-interest of respondents 1 to 4 herein) being stranger to the said land of the plaintiff/appellant herein with no title, right or claim thereof is causing interference there into the possession of the plaintiff/appellant herein and continue with such interference despites requests made by the plaintiff/appellant herein, thus, necessitating the filing of the suit.

3. The original defendant 1 in the suit (the predecessor-in-interest of the respondents 1 to 4 herein) filed written statement of the suit filed by the plaintiff/appellant herein stating therein that the plaintiff/appellant herein and the proforma respondents herein are out of the possession of the land in question and that out of the said land one kanal stands purchased by him from the plaintiff/appellant herein in the year 1988 against an amount of Rs. 15,000/- and also came to be fenced by a boundary wall in the month of December, 2005 which was never objected to by the plaintiff/appellant herein and that in the second and third week of February, 2007, he approached the plaintiff/appellant herein for raising construction over the said land and requested for formally transferring the land in question in his favour by executing the necessary papers in his name, which request the plaintiff/appellant herein started avoiding and finally maintained the suit dated 03.07.2019 under reply.

4. The trial court on the basis of the pleadings of the parties, framed the following issues:

(i) Whether the plaintiff along with proforma defendants is owner of the suit land measuring 2 kanals comprising Khasra no. 37/25, situated at Village Rakh Sarkar Plai, Tehsil & District Kathua?

OPP

(ii) In case issue no. 1 is proved in affirmative, whether the defendant no. 1 is interfering into peaceful possession of the suit land without any right or title?

OPP

(iii) Whether the plaintiff has received Rs. 15000/- from the defendant no. 1 as it is explicit in the receipt dated 23.11.1988 for purchase of 1 Kanal of land at Rakh Sarkar Plai, Kathua comprising Khasra no. 37/25 and handed over the possession of said 1 Kanal land to the defendant no. 1 and he has raised boundary wall thereon?

OPD

(iv) Whether the suit in present form is not maintainable? OPD

(v) Whether the plaintiff has no cause of action to institute the suit?

OPD

(vi) Relief.

5. The plaintiff/appellant herein in order to prove issues (i) and (ii) besides appearing himself as a witness also examined witnesses, namely, Balkar Chand and Mani Ram, whereas the original defendant (the predecessor-in-interest of respondents 1 to 4 herein) appeared as his own witness and also examined the witnesses, namely, Krishan Chand, Jagdish Raj, Sodhagar

Mal, Lakhwinder Singh, Ram Rattan, Rajinder Paul, BishanDass, Lal Chand, Ram Dass and Vijay Kumar.

- 5 The trial court after concluding the trial of the case and while passing the impugned judgment and decree, modified issue (i) and reframed the same as **“whether the plaintiff and proforma defendants are in possession of 2 kanals of land comprising survey No. 37/25 of Village? OPP”** and consequently on the basis of the evidence led by the parties *qua* the original issues framed by the trial court referred hereinabove, dismissed the suit of the plaintiff/appellant herein in terms of the impugned judgment and decree dated 31.08.2019 holding that the possession of the plaintiff over 2 kanals of land is not proved by him therefore, no decree deserves to be passed in favour of the plaintiff/appellant herein in respect of the suit land.
- 6 Aggrieved of the said judgement and decree dated 31.08.2019 passed by the trial court, the appellant herein preferred an appeal before the appellate court on 26.11.2019 which appeal as well came to be dismissed by the appellate court in terms of impugned judgment and decree dated 27.03.2023 while observing that the issue (i) has not been drafted by the trial court in accordance with law and that the modification of the said issue by the trial court has not been done in accordance with law and that in view of the pleadings of the parties, issue (i) was not required to be framed and consequently struck off issue (i) and decided issue (iii) holding that the respondent 1(the predecessor-in-interest of respondents 1 to 4 herein) has proved that he was put in possession of 1 kanal of land by the

plaintiff/appellant herein on 23.11.1998 after receiving Rs. 15,000/- from him and since the possession of respondent 1(predecessor-in-interest of respondents 1 to 4 herein) stands proved over the one kanal of land in question, the interference alleged by the plaintiff/appellant herein over the said land by respondent 1(predecessor-in-interest of respondents 1 to 4 herein) does not arise and subsequently dismissed the appeal.

7 Dissatisfied with the aforesaid judgments and decrees passed by the courts below, the appellant herein has maintained the instant second appeal calling in question the said judgments and decrees of both the courts below, *inter alia*, on the grounds that the impugned judgments and decrees are bad in law as well as on facts based on no evidence inasmuch as having been passed in breach of the provisions of the Evidence Act as well as transfer of the Property Act.

Heard learned counsel for the parties and perused the record.

8 Although this Court on 17.11.2023 upon considering the instant appeal has framed following three questions to be substantial questions of law, yet having regard to the facts and circumstances of the case, the judgments and decrees under challenge in the instant appeal, the following substantial questions of law is being framed to be involved in the instant appeal for adjudication:

- i) **Whether the trial court could have modified/amended issue (i) after closing of the arguments of the counsel for the parties without affording an opportunity to the parties to lead evidence in respect of the amended issue and if so, what is its effect?**

ii) Whether the appellate court grossly erred while strike out issues (i) and (ii) framed by the trial court without providing an opportunity to the parties and could proceed to decide the appeal thereof.

9. As has been noticed in the preceding paras, it is not in dispute that the plaintiff/appellant herein claimed to be the owner in possession of 2 kanals of land in the suit filed before the trial court, having stated further that out of the said 2 kanals of land, he had agreed to sell out of the said land, 5 marlas each to the proforma defendants/respondents 5 and 6 herein pursuant to the agreement to sell dated 10.02.2007 and 15.02.2007 respectively and that the original defendant in the suit, being the predecessor-in-interest of respondents 1 to 4 is interfering into his possession, occupation and enjoyment over the said land.

It is also not in dispute that the original defendant in the suit being the predecessor-in-interest of respondents 1 to 4 herein, in the written submissions filed to the suit had contended that the plaintiff/appellant herein had sold 01 kanal of land out of the said 2 kanals of land to him against an amount of Rs. 15,000/- and had also executed a receipt in lieu thereof besides having delivered possession of said 01 kanal of land to him.

It is also not in dispute that on the basis of the respective pleadings of the parties and the case set up by them therein, the trial court framed the aforesaid issues on 19.09.2007, while requiring the plaintiff/appellant herein to prove the (i) and (ii) that he is the owner in possession of 2

kanals of land along with the proforma respondents 5 and 6 herein and that the defendant 1 is interfering with his possession over the said land without any right or title, also requiring the original defendant predecessor-in-interest of respondents 1 to 4 herein, to prove issue (iii) that the plaintiff/appellant herein has received Rs. 15,000/- from him pursuant to the receipt dated 23.11.1988 for purchase of land of 01 kanal and handed over the possession of said one kanal of land to him.

10. Perusal of the record would reveal that the parties before the trial court in order to prove the said issues, led their evidence, whereafter the trial court after closure of the arguments and at the time of rendering of the judgment in the suit, seemingly modified and amended issue (i) and reframed the same as has been noticed in the preceding paras which exercise had been undertaken by the trial court admittedly while invoking the provisions of Order 14 Rule 5 of the Code of Civil Procedure (for short the Code), which being an enabling provision by a court provides that before passing a decree at any time a court can amend issues or frame additional issue(s) on such terms as it thinks fit and as may be necessary to determine the matter in controversy between the parties, besides also authorising the court to strike out issues that may appear to be wrongly framed.

It is significant to mention here that Rule 5(1) of Order 14 of the Code, allows a court to amend or add issues and in the first part, leaves the said power in the discretion of the court to amend issues or to frame additional issues as it deems fit as is manifest from the use of the expression “may appearing therein”, however, simultaneously provides therein that the

issues can be amended or additional issues can be framed only when the court deems it necessary to determine the matter in controversy between the parties, thus, making it obligatory upon the court as is manifest from the expression “shall appearing therein”

Further under Order 14 Rule 5 (2), a court is authorized at any time before passing a decree, to strike out or delete any issue that appears to have been wrongly or unnecessarily framed.

11. Indisputably both the courts below as is noticed in the preceding paras have taken a recourse to provisions of Order 14 Rule 5 (1) and (2) of the Code while amending and striking off the issues and though the courts below had power to amend, add or strike out or delete an issue at any stage of the suit before a decree is passed suggesting that such power may be exercised after the commencement of the proceedings, at the stage of arguments, or even after the closing of the arguments, however, law is settled that when an issue is amended, the parties should be given an opportunity of leading evidence as also heard on the amended issue, even though the parties may have led evidence on such amended issues, so is similar the position of law vis a vis striking off of an issue that when a court strike out an issue, at any stage of the proceedings, such issue should not be struck off or deleted without the consent of the parties and without hearing the parties.
12. As has been noticed hereinabove, both the courts below have observed the aforesaid requirement of law in breach, in that the trial court, while amending the issue (i) after the closure of the arguments has not provided any hearing to the parties in general and the plaintiff/appellant herein in

particular in respect of the said issue, in that the onus to prove the said issue had been put on the plaintiff/appellant herein, so as also the appellate court grossly erred while striking off issue (i) and (ii) after closure of the arguments in the appeal filed by the plaintiff/appellant herein by not providing any opportunity of hearing to the parties in general and the plaintiff/appellant herein in particular *qua* the striking/deleting of said issues.

13. Viewed thus, for what has been observed, considered and analysed hereinabove, the courts below have grossly faulted while passing the impugned judgments and decrees, thus, necessitating setting aside of the impugned judgments and decrees and remanding of the matter back to the trial court for re-trial of the suit from the stage of the framing of issues.
14. The substantial questions of law framed by this Court earlier on 17.11.2023 shall be deemed to have paled into insignificance.
15. Resultantly, the instant appeal succeeds on the basis of the substantial questions of law framed today by this Court and is disposed of with the following directions:
 - i) The impugned judgments and decrees dated 31.08.2019 and dated 27.03.2023 passed by the trial court and the appellate court respectively, are set aside;
 - ii) The suit is restored back on the file of the trial court with a direction to the trial court to recommence the trial of the suit from the stage of the framing of issues and to proceed in accordance with law in the matter;

- iii) Parties shall appear before the trial court on 30.12.2024;
- iv) Till the parties appear before the trial court, status quo on spot with respect to the suit land shall be maintained;
- v) The xerox record summoned from the courts below shall be retained on the record of the instant case file.

(JAVED IQBAL WANI)
JUDGE

Jammu
05.12.2024
Rakesh

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No

