

(2023) 09 SHI CK 0010
In the High Court Of Himachal Pradesh
Case No : CMPMO No. 176 Of 2022

Narain Dass Mehan (Since Deceased) Through His Legal Representatives & Ors APPELLANT

Vs

Yashoda Devi (Since Deceased) Through Her Legal Representatives & Ors RESPONDENT

Date of Decision : 01-09-2023

Acts Referred:

Code Of Civil Procedure, 1908 — Section 151
Evidence Act, 1872 — Section 45, 73

Citation : (2023) 09 SHI CK 0010

Hon'ble Judges : Tarlok Singh Chauhan, J

Bench : Single Bench

Advocate : Neeraj Gupta, Ajeet Pal Singh Jaswal, Harish Chander Sharma

Final Decision : Disposed Of

Judgement

Tarlok Singh Chauhan, J

1. The predecessor-in-interest of the plaintiffs/ respondents had filed the suit for following reliefs:

“(i) plaintiff be declared absolute owner in possession of suit property comprised in Kh. 334 measuring 1440 sq. ft. at 91 to 94 Lower Bazar Shimla, H.P.

(ii) mutation No. 774, dated 30.7.1977 be declared null and void and consequently revenue entries be directed to be corrected showing plaintiff as absolute owner of the suit land/property.

(iii) defendants be restrained permanently from claiming any rent from the tenants inducted in the suit property.”

2 It is on the basis of the pleadings of the parties that the learned trial court on 19.10.2010 framed as many as 9 issues, which read as under:-

1. Whether the plaintiff is absolute owner in possession of the disputed property,

as alleged?...OPP

2. Whether the plaintiff is entitled to the symbolic/actual possession of the suit property, as prayed for ?

3. Whether the plaintiff is entitled for the decree of permanent prohibitory injunction, as prayed for? ..OPP

4. Whether the suit of the plaintiff is time barred, as alleged? ...OPD

5. Whether the plaintiff has no cause of action to file the present suit against the defendant, as alleged? ...OPD

6. Whether the plaintiff is estopped to file the present suit by her own acts, deeds, conduct and acquiescence etc., as alleged? ...OPD.

7. Whether the suit is not properly valued for the purpose of court fees and jurisdiction, as alleged?...OPD

8. Whether the suit is bad for mis-joinder of parties, as alleged? ...OPD.

9. Relief.

3 Evidently, there is no issue regarding declaration qua the sale deed set up by the defendants.

4 Once that be so, obviously there is no question of allowing the application filed by the plaintiffs/respondents herein under Section 151 CPC and Section 73 read with Section 45 of the Indian Evidence Act for sending the document (sale deed) to handwriting expert for opinion.

5 If at all, the plaintiffs had any doubt regarding correctness and veracity of the aforesaid sale deed, they would have amended the plaint and assailed the same.

6 Having failed to do assail the same, they cannot be indirectly permitted to assail the sale deed, more particularly, when there is no issue framed to that effect.

7 The stage of framing the issues is an important one inasmuch as on that day the scope of the trial is determined by laying the path, on which the trial shall proceed excluding diversions and departures therefrom. The date fixed for settlement of issues is, therefore, a date fixed for hearing. The real dispute between the parties is determined, the area of conflict is narrowed and the concave mirror held by the court reflecting the pleadings of the parties pinpoints into issues, the disputes on which the 'two sides differ. The correct decision of civil lis largely depends on correct framing of issues, correctly determining the real points in controversy, which need to be decided. The scheme of order XIV of the Code of Civil Procedure dealing with settlement of issues shows that an issue arises when a material proposition of fact or law is affirmed by one party and denied by the other. Each material proposition affirmed by one party and denied by other should form the subject of distinct issue. The issues are framed and

recorded on which the decision of the case entirely depends. The evidence led by the parties has to be confined to issues and the pleadings. No evidence on controversies not covered by issues and the pleadings, shall normally be admitted, for each party leads evidence in support of issues, the burden of proving which lies on it. The object of an issue is to tie down the evidence and arguments and decision to a particular question so that there may be no doubt on what the dispute is. The judgment, then proceeding issue-wise would be able to tell precisely how the dispute was decided.

8 To say the least, the learned trial court has exhibited total ignorance to the factual as well as legal aspect of the matter by not confining itself to the issues that were framed in the instant case.

9 Consequently, order dated 18.5.2022 passed by the learned trial court is set aside and the application filed by the plaintiffs/respondents is ordered to be dismissed.

10 I am informed at the bar that the case has been listed before the learned trial court on 2.9.2023. Since the suit pertains to year 2008, the learned trial court is directed to fix the date of hearing in the 3rd week of September, 2023 and make all endeavours to decide the same as expeditiously as possible and in no event later than 31.10.2023.

11 The petition is disposed of in the aforesaid terms, so also the pending application(s), if any.