

Order Sheet
IN THE LAHORE HIGH COURT
LAHORE
Judicial Department

W.P. No. 27318 of 2023

Laeeq Ahmad.

Vs. Addl. District Judge, Kasur, etc.

| <i>Sr. No. of order/ proceedings</i> | <i>Date of order/ Proceeding</i> | <i>Order with signature of Judge, and that of Parties' counsel, where necessary</i> |
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20.04.2023. Mian Muhammad Afzal, Advocate for petitioner.

Through this constitutional petition, the petitioner has called in question order dated 06.07.2022 passed by learned trial court, whereby application under Order XIV Rule 5, 1 & 2 of the C.P.C filed by the petitioner, who was defendant No. 24 in the suit for declaration, permanent and mandatory injunctions filed by respondents Nos. 3 & 4 has been dismissed and has also called in question judgment dated 08.04.2023 passed by learned Addl. District Judge, Kasur, whereby revision petition filed by the petitioner against the afore-referred order has also been dismissed.

2. It is contended by the learned counsel for the petitioner that as the respondent No.3/one of the plaintiffs of the suit during pendency of the suit got recorded her statement on 09.02.2019 that she had entered into compromise with defendants No. 21 to 23 (*now respondents No. 25 to 27*) and has received Rs. 18,00,000/- from them and had thereafter withdrawn her claim to their extent, therefore, she was estopped from claiming the relief as prayed for in the civil suit, for which purpose the petitioner had filed an application under Order XIV Rule 5, 1 & 2 of the C.P.C for framing of an issue to the effect "*Whether the plaintiff is estopped by her act and conduct? OPP*", which application has been dismissed and revision filed there-against has also been

dismissed without appreciating the said aspect of the matter, hence, the impugned orders are not sustainable. Prays for setting-aside the said orders and allowing his application for framing of additional issue.

3. Perusal of record shows that respondents No. 3 and 4 filed a suit for declaration, permanent and mandatory injunctions against the petitioner and respondents No. 5 to 27, wherein they claimed themselves to be owner of land measuring 79 Kanal 13 Marlas being successors in interest of deceased Sana Ullah and Aziz Begum and also challenged the validity of the impugned inheritance of Muhammad Anwar, predecessor-in-interest of respondent No. 9 and mutation No. 632 dated 11.05.2005 and during the course of proceedings of the suit, the respondent No. 3 (*'one of the plaintiffs'*) withdrew her suit to the extent of respondents No. 24 to 27 on the basis of statement got recorded by her on 09.02.2019. The petitioner filed his written statement on 17.08.2020 and contested the suit, wherein specific plea of estoppel was not raised despite availability of afore-referred statement on the record. Issues were framed there-after on 20.09.2021. Where-after during the pendency of trial wherein evidence of PWs was recorded, the petitioner filed an application on 13.06.2022 for framing of additional issue relating to estoppel, which application was dismissed concurrently by both the courts below. The petitioner had neither raised the defence of estoppel through his written statement nor permission was sought for to amend his written statement and on the basis of pleading of the parties, issues were framed by the court by narrowing down the determinable questions arising out of controversy between the parties

through their pleadings and the same was done in terms of principles laid down in Order XIV Rule 1 C.P.C, which requires framing of issues when a material proposition of fact or law is affirmed by one party and denied by the other, sub-Rule (1) and (2) of which is reproduced below:-

*“1. **Framing of issues** (1) Issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other.*

(2) Material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence.

.....”

In terms of the afore-said provision, the learned trial court had framed the following issues:-

“1. Whether the plaintiffs are entitled to a decree for declaration as prayed for? OPP

2. If the above said issue is proved in affirmative, whether the plaintiffs are entitled to a decree for possession with permanent injunction as prayed for? OPP

3. Whether the plaintiff has not come to the court with unclean hands? OPD

4. Whether the plaintiff has no cause of action and locus standi to file the instant suit? OPD

5. Whether the instant suit is not proceedable in its present form due to mis-joinder and non-joinder of proper and necessary parties? OPD

6. Relief?”

The evidence of PWs was also recorded, where-after on 13.06.2022, the petitioner filed an application for framing of additional issue in the following terms:-

“Whether the plaintiff is estopped by her act and conduct? OPP”,

Additional issue framed under XIV Rule 5 of the C.P.C is reproduced below:-

“(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."

4. The learned trial court declined to frame the additional issue on the ground that petitioner had not raised plea of estoppel as defence in his written statement and the respondent No.3/plaintiff had settled the matter with respondent Nos. 24 to 27 but had not accepted the execution of impugned mutations challenged in the suit. Moreover, she had not simply withdrawn her claim to the extent of afore-referred respondents but had received Rs. 18,00,000/-, and the issues had been framed by keeping in view the pleadings of the parties and the petitioner had not raised issue of estoppel in his written statement. Furthermore, it was held by the trial court that if the petitioner thinks that issue erupted during proceedings of suit even then he cannot agitate the same because the respondent No.3/ plaintiff had not stepped back from her original claim and principle of estoppel is not applicable to her. Besides, the application for amended issue had been filed after a lapse of more than 3-years of statement got recorded by the respondent No. 3 on 12.02.2019. Moreover, examination-in-chief of PWs-1 and 2 had been already recorded by the court on 29.03.2022 and the instant application had been filed just to delay the matter.

5. The learned Addl. District Judge, Kasur, has already considered the said aspect of the matter and dismissed the revision petition filed by the petitioner by upholding the findings of trial court while observing as under:-

"05. In the present case neither any objection with regard to the principle of estoppel has been taken by the petitioner in his written statement nor he applied to the learned trial court for permission to

amend his pleadings/written statement in order to incorporate his objection regarding the application of the principle of estoppel. There is nothing on the record that the petitioner had taken any objection on the basis of principle of estoppel. Therefore, the learned trial court has rightly declined the petitioner's prayer for framing of an additional issue with regard to the application of principle of estoppel. Therefore, the impugned order has been passed by the learned trial court in accordance with law and there is nothing to suggest that the learned trial court has exercised the jurisdiction not vested in it or has exercised the jurisdiction so vested with any material irregularity or illegality.

06. In view of the facts discussed above, the impugned order calls for no interference of this court in its revisional jurisdiction. Therefore, the instant revision petition being devoid of any force is hereby dismissed. Memo of costs be prepared."

6. Perusal of the record shows that despite availability of statement of respondent No. 3 recorded on 09.02.2019, the plea of estoppel was not raised by the petitioner, which was a legal requirement in terms of sub-Rule (1) of Rule 1 of Order XIV of the C.P.C, as the same provides that issues arise when a material proposition of fact or law is affirmed by one party and denied by the other party and sub-Rule (2) define material proposition as those propositions of law and fact, which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence, hence, the petitioner failing to raise said defence is not entitled to claim framing of additional issue on the question of estoppel. The trial court has already framed issues No. 1,2,4 and 5 relating to entitlement of the plaintiffs/respondent Nos. 3 & 4 for decree and existence of cause of action in their favour and the suit being proceedable in the present form, wherein the claim of the petitioner of estoppel of the plaintiffs to claim decree can very well be considered if evidence produced on record so

establishes for the reason that the afore-referred issues are in general terms and the entire case has to be decided on the basis of the same keeping in view the evidence available on the record and while doing so the court can deal with the question of estoppel if the same arises for determination of the same at the time of final decision, therefore, no prejudice would be caused to the rights of the petitioner if additional issue relating to estoppel is not framed by the court. For reaching this conclusion reference may be made to **1988 S C M R 4** (*Mst. SUGHRA BIBI alias MEHRAN BIBI versus ASGHAR KHAN and another*), wherein it is provided that failure to frame one or other issue at trial stage, in circumstances of case would not have the effect of nullifying the trial, and the Parties were required to lead evidence keeping in view the precise grounds pressed by them and no prejudice would be caused to parties due to framing of an omnibus issue by trial court. Moreover, it was also held that it was the duty of parties to get proper issues framed, if they had any objection or suggestion regarding framing of issues.

7. In the present case, despite the fact that it was noted by the courts below that petitioner had not taken plea of estoppel in his written statement, the petitioner never applied for amendment of his pleadings and without applying for the same is raising plea of framing of additional issue, which according to the opinion of the learned trial court does not arise in the matter. It is not the vested right of a party to stress for framing of a particular issue if such a plea is not raised through its pleadings and where the court is convinced that the same does not arise from the pleadings or any other material available on the record, the said court can refuse to

frame the issue requested to be framed by a party. This court is cognizant of the fact that the trial court should frame all the issues required for proper determination of dispute pending before it yet this court in its constitutional jurisdiction would not ordinarily interfere in the concurrent findings recorded by the courts below, whereby both the courts have concluded that the question of framing of additional issue relating to estoppel does not arise from the pleadings of the parties and this Court has no reason to conclude otherwise.

8. Even otherwise as the statement was got recorded by respondent No. 3 on 09.02.2019 during the pendency of the suit, the court can always take into consideration the effect of the said statement while finally deciding the matter as court is competent to determine all the matters pending adjudication before it while also taking into consideration the effect of changed circumstances in order to meet the ends of justice. Reliance in this regard is placed on **PLD 2008 Supreme Court 85** (*Rana MUHAMMAD HAYAT KHAN versus Rana IMTIAZ AHMAD KHAN*), **PLD 2007 Supreme Court 52** (*Hafiz HAMDULLAH versus SAIFULLAH KHAN and others*) and **PLD 1978 Supreme Court 220** (*Mst. AMINA BEGUM AND OTHERS versus Mehar GHULAM DASTGIR*)

9. The afore-referred findings of the trial court and observations by the learned Addl. District Judge, Kasur, up-holding the decision of the civil court are well reasoned and do not suffer from any misreading, non-reading, illegality or jurisdictional defect for this Court to warrant any interference in the same.

10. For what has been discussed above, this constitutional petition being devoid of any merits is **dismissed.**

(Muzamil Akhtar Shabir)
Judge

Zeeshan Khan

APPROVED FOR REPORTING