

JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Civil Revision No.18167 of 2021

Javed Islam **VERSUS** Tahir Islam

JUDGMENT

Date of Hearing: 13.03.2024

Petitioner(s): Mr. Rizwan Mushtaq, Advocate

Respondent(s): Rana Nasrullah Khan, Advocate

SHAHID BILAL HASSAN-J: Succinctly, the petitioner is real brother of the respondent, and the mother of the parties is living with the petitioner at his house at Sialkot; that the petitioner and the respondent had jointly purchased property bearing PTI No. VB-19S-4/A/1/RH, BVI-19S-4/A/ Plot measuring 4-kanals 5-marlas at Church Road, Sialkot City vide registered sale deeds No.389 and 1452, respectively registered on 14.01.2004 and 25.02.2004. Detail whereof is described as: i. Sale Deed No.389, Bahi No.1, Volume No.1821 dated 14.01.2004, measuring 15 marlas; ii. Sale Deed No.1452 Bahi No. 1, Volume No.1832, dated 25.02.2004, measuring 3-kanals 10-marlas. Furthermore, the petitioner as well as the respondent had engaged in joint business, and had established two Companies namely Javed Goods Transport Company,

Sheranwala Gate Lahore, and New Sialkot Karachi Goods Forwarding Company, opposite Sheranwala Gate, Circular Road, Lahore. The said Freight Transport business was doing successful business with a return in Crores of Rupees. Hence, later on another Company namely Tahir Goods Transport Company was established with the profits obtained from the above Companies, however, the business over this later company was also being conducted by the two brothers jointly; that subsequently in the year 2012, the respondent convinced the petitioner to enter into a family settlement, whereby the respondent shall forego and surrender all his interest in the above mentioned landed property for which he shall soon execute an appropriate Transfer Deed in favour of the petitioner regarding the transfer of his share in the above mentioned landed property at Sialkot, in consideration of the petitioner foregoing all his interests in the abovementioned joint goods transport business. This offer and assurance was happily accepted by the petitioner for the trust held by him in his brother i.e. the respondent. Hence, in the year 2012, the petitioner stopped receiving his share of profits in said Goods Transport Business and forewent all his interest in the said joint Transport business, in consideration whereof,

the respondent surrendered all his interest in the above mentioned joint property at Sialkot, where the petitioner and his mother alongwith the rest of his family are residing since then as exclusive owners thereof. In this manner, the petitioner got constructed boundary wall of the said property and also added few rooms on the said property besides making other improvements by spending Rs.10,000,000/-. Moreover, the respondent since the above event has been independently and exclusively running the abovementioned Freight Transport business exclusively as sole proprietor in all the three abovementioned companies, and the petitioner has neither received nor demanded any share in the profits of the above business from the respondent. Hence, said family settlement was completely acted upon; that quite surprisingly, after the above settlement of property and business had been acted upon, instead of having the Transfer Deed qua surrender of his interest in the said joint property executed in favour of the petitioner, the respondent filed a suit for partition with respect to the above mentioned property on 21.05.2016. This suit was contested by the petitioner primarily on the ground that the suit property was un-partition-able due to the absence of title of the respondent in it for family settlement having been acted

upon; hence the following issues were framed in that suit:

- i. *Whether the disputed property is joint between the parties on the basis of sale deeds bearing documents No. 389 dated 14.01.2004 and 1452 dated 25.02.2004? OPP.*
- ii. *If above issue is proved in affirmative, whether the plaintiff is entitled to the decree for separate possession through partition of disputed property and what are the respective shares of the parties? OPP.*
- iii. *Whether the plaintiff has already surrendered the suit property in favour of the defendant by a mutual settlement whereby the defendant surrendered his share in joint business at Lahore in favour of plaintiff and he is stopped to bring the present suit? OPD.*
- iv. *Whether the suit of the plaintiff is barred by law? OPD.*
- v. *Whether the plaintiff has no cause of action to file this suit? OPD.*
- vi. *Relief.*

The petitioner instituted a suit for declaration titled Javed Islam. Vs. Tahir Islam while maintaining that the respondent had no title or interest in the above mentioned property situated at Sialkot as per the family settlement that had been acted upon with regards to the shares of the two brothers that is the petitioner and the respondent through which, the petitioner had abdicated and surrendered all his interest and title in the said transport business in favour of the respondent, while the respondent had transferred all his share in the above mentioned landed property at Sialkot in favour of the

petitioner; and hence the petitioner be declared as the exclusive owner in possession of the suit property; that the above suit was contested by the respondent before the learned Trial Court, however, on the application of the respondent, the learned trial Court consolidated both the suits but the consolidated issues were never framed, and the Trial Court proceeded with the trial of both the suits only on the issues framed in the earlier suit, instituted by the respondent. Both the parties adduced their evidence. The learned trial Court vide impugned consolidated judgment and decree dated 31.01.2019 passed preliminary decree of partition and dismissed suit of the petitioner. The petitioner being aggrieved preferred an appeal but the same was dismissed vide impugned judgment and decree dated 18.12.2020; hence, the instant revision petition.

2. Heard.

3. It is an admitted fact on record that after consolidation of both the suits, the learned trial Court did not frame consolidated issues by considering the pleadings of parties in their respective suits and written statements. It is observed that the term "issue" in a civil case means a disputed question relating to rival contentions in a suit. It is the crucial point of disagreement, argument or decision. It is the point on

which a case itself is decided in favour of one side or the other, by the court. Framing of issues is probably the most important part of the trail of a civil suit. For a correct and accurate decision in the shortest possible time in a case, it is necessary to frame the correct and accurate issues. Inaccurate and incorrect issues may kill the valuable time of the court. According to the dictionary meanings, "issue" means a point in question; an important subject of debate, disagreement, discussion, argument or litigation. Issues mean a single material point of fact or law in litigation that is affirmed by one party and denied by the other party to the suit and that subject of the final determination of the proceedings.

4. As per the Order XIV Rule 1(4) of the Code of Civil Procedure, 1908, issues are of two kinds: (1) Issues of fact, (2) Issues of Law. Issues, however, may be mixed issues of fact and law. Rule 2(1) of Order XIV provides that where issues: both of law and fact arise in the same suit, notwithstanding that a case may be disposed of on a preliminary issue, the court should pronounce judgment on all issues, but if the court is of the opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first, if that issue relates to: The jurisdiction of the

court; or A bar to the suit created by any law for the time being in force. For that purpose, the court may, if it thinks fit, postpone the settlement of the other issues until the issues of law have been decided. The main object of framing of issues is to ascertain the real dispute between the parties by narrowing down the area of conflict and determine where the parties differ. An obligation is cast on the court to read the plaint and the written statement and then determine with the assistance of the learned counsel for the parties, material propositions of fact or of law on which the parties are at variance. The issue shall be formed on which the decision of the case shall depend. 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.

5. It is duty of Court to frame issues from material propositions. To frame issues, court is to find out questions of fact, questions of law and mixed questions of fact and law from pleading of parties and other materials, which are produced with pleading and parties are to produce their evidence to prove or

disprove framed issues. Following are the relevant provisions in this regard:-

i. Order 14 Rule 1 to 6 of CPC 1908

ii. Order 18 Rule 2 of CPC 1908

iii. Order 20 Rule 5 of CPC 1908

iv. Order 41 Rule 31 of CPC 1908

v. Order 15 Rule 1 of CPC 1908

Matters to be considered before framing of issues are:-

- i. Reading of the plaint and written statement, the court shall read the plaint and written statement before framing an issue to see what the parties allege in it.*
- ii. Ascertainment whether allegations in Pleadings are admitted or denied, Order 10 Rule 1 permits the court to examine the parties for the purpose of clarifying the pleadings, and the court can record admissions and denials of parties in respect of an allegation of fact as are made in the plaint and written statement.*
- iii. Admission by any Party. If any party admitted any fact or document, than no issues are to be framed with regard to those matters and the court will pronounce judgment respecting matters which are admitted.*
- iv. Examination of material proposition. The court may ascertain, upon what material proposition of law or fact the parties are at variance.*

- v. *Examination of witnesses. The court may examine the witnesses for purpose of framing of issues.*
- vi. *Consider the evidence. The court may also in the framing of issues take into consideration the evidence led in the suit. Where a material point is not raised in the pleadings, comes to the notice of the court during course of evidence the court can frame an issue regarding it and try it.*
- vii. *Examination of any witnesses or documents under Order 14 Rule 4. Under this rule any person may be examined and any document summoned, for purposes of correctly framing issues by court, not produced before the court.*

The court may frame the issues from all or any of the following materials.

- i. *Allegations made on oath. Issues can be framed on the allegations made on oath by the parties or by any persons present on their behalf or made by the pleader of such parties.*
- ii. *Allegations made in Pleadings. Issue can be framed on the basis of allegations made in the pleadings.*
- iii. *Allegations made in interrogatories. Where the plaint or written statement does not sufficiently explain the nature of the party's case, interrogatories may be administered to the party, and allegations made in answer to interrogatories,*

delivered in the suit, may be the basis of framing of issues.

- iv. Contents of documents. The court may frame the issue on the contents of documents produced by either party.*
- v. Oral examination of Parties. Issues can be framed on the oral examination of the parties.*
- vi. Oral objection. Issues may be framed on the basis of oral objection.*

Furthermore, at any time before passing of decree, court can amend framed issues on those terms, which it thinks fit. However, such amendment of framed issues should be necessary for determination of matters in controversy between parties. Moreover, at any time before passing of decree, court can strike out framed issues especially when it appears to court that such issues have been wrongly framed or introduced. Regarding amendment of framed issues, court possesses discretionary power. Court can exercise this power when no injustice results from amendment of framed issue on that point, which is not present in pleading(s). However, it cannot be exercised when it alters nature of suit, permits making of new case or alters stand of parties through rising of inconsistent pleas. Regarding amendment of framed issues, court also has mandatory power. In fact, court is bound to

amend framed issues especially when such amendment is necessary for determination of matters in controversy, when framed issues do not bring out point in controversy or when framed issues do not cover entire controversy. When the lower court omitted to frame an issue before trying a matter in controversy, the appellate court can frame the issue and refer it for trial to the lower court. There is no need to remand the entire case. Then the lower court should try such issues and return the evidence and its decision to the appellate court.

6. However, in this case, the issues are not according to the pleadings of the parties rather after consolidation of both the suit, instituted by the rival parties, no consolidated issues were framed by the learned trial Court. It seems that the learned trial Court was not acquainted with the real myth of framing of issues, because the parties have to lead evidence keeping in mind the burden of proof placed upon their shoulders while formulating issues. The issues framed by the learned trial Court do not cover the real controversy, meaning thereby the provisions of Order XIV, Rule 1 of the Code of Civil Procedure, 1908 have been defiled. Evidence is led after framing of issues. The stage of framing of issues is very important in trial

of civil suit because at that stage the real controversy between the parties is summarized in the shape of issues and narrowing down the area of conflict and determination where the parties differ and then parties are required to lead evidence on the said issues. The importance of framing correct issues can be seen from the fact that parties are required to prove issues and not pleadings as provided by Order XVIII, Rule 2, CPC. The Court is bound to give decision on each issue framed as required by Order XX, Rule 5, CPC. Therefore, the Courts while framing issues should pay special attention to Order XIV of CPC and give in depth consideration to the pleadings etc. for the simple reason that if proper issues are not framed, then entire further process will be meaningless, which will be wastage of time, energy and would further delay the final decision of the suit. In the present case, as observed supra, the learned Trial Court did not ponder upon the pleadings of the parties and failed to frame proper issues after consolidation of both the suits and could not sum up the real controversy into consolidated issues; thus, further proceedings are of no use. In this regard reliance is placed on Muhammad Yousaf and others v. Haji Murad Muhammad and others (PLD 2003 Supreme Court 184) wherein it has been held:-

'The provisions as contained in Order XIV, Rule 5, C.P.C. were not kept in view and ignored completely by the learned trial Court while framing the issues as a result whereof controversy regarding removal of household articles could not be set as naught. There is no cavil to the proposition which was settled decades ago and still hold field "that where an issue, though in terms covering the main question in the cause, does not sufficiently direct the attention of the parties to the main questions of fact, necessary to be decided, and the parties may have been prevented from adducing evidence, or fresh issue may be directed to try the principal question of fact". (Olagappa v. Arbuthnot (1875) 14 BLR 115-142, 14/268, 316. "The duty of raising issues rests under the Code of Civil Procedure on the Court and it would be unsafe to presume from the failure of the Court to raise the necessary issues an attention of the defendant to admit the fact, which the plaintiff was bound to prove." (Ganou v. Shri Devsidhes War, 1902 AIR 26 Bom. 360-361).'

Further reliance in this regard is placed on Mst. Rasheeda Bibi & others v. Mukhtar Ahmad & others (PLJ 2010 SC 530), wherein it has been held that:-

'It is the duty of the Court to frame issues correctly primarily on pleadings of the

parties, because the issues framed by the Court correctly reflect the controversies arising from the pleadings of the parties and the Court thus can render an effective judgment on the disputed facts and the party also know on what fact the evidence should be led.-----

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, that framing of a particular issue was not pressed by party affected is no ground for condoning failure to frame necessary issue and the mandate of Order XIV, Rule 1 CPC reveals that it is incumbent upon the Court to frame issues in the light of the controversies raised in the pleadings and after examination of the parties, if necessary. Issues of law and facts are to be illustrated clearly, to enable the parties to understand the points at issue to support their respective claims by recording evidence on all material points. It is the settled principle of law that “action or inaction” on the part of the Court cannot prejudice a party to litigation and the failure of Courts below to determine material issue amounted to exercise of jurisdiction illegally or with material irregularity.’*

Moreover, in judgment reported as Mst. Rasheeda Bibi and others v. Mukhtar Ahmad and others (2008 SCMR 1384), the Supreme Court of Pakistan has invariably held that:-

'In the case of Ananta Kumar Majumdar and others v. Gopal Chandra Majumdar and others PLD 1961 Dacca 65, it has been held that plea that framing of a particular issue was not pressed by party affected is no ground for condoning failure to frame necessary issue and the mandate of Order XIV, rule 1, C.P.C. reveals that it is incumbent upon the court to frame issues in the light of the controversies raised in the pleadings and after examination of the parties, if necessary. Issues of law and facts are to be illustrated clearly, to enable the parties to understand the points at issue to support their respective claims by recording evidence on all material points. It is the settled principle of law that "action or inaction" on the part of the court cannot prejudice a party to litigation and the failure of courts below to determine material issue amounted to exercise of jurisdiction illegally or with material irregularity.

The said judgment has been followed by this Court in judgment reported as Syed Amjad Hussain Jaffri and others v. Additional District Judge and others (2023 CLC 2071).

7. For the foregoing reasons, without touching the merits of the case, may it prejudice case of either of the side, the impugned judgments and decrees

passed by the learned Courts below are set aside by allowing the revision petition in hand and cases are remanded to the learned trial Court with a direction to re-frame consolidated issues, keeping in view the above said observations by considering the pleadings of parties, record evidence and decide the cases afresh on merits in accordance with law at the earliest preferably within a period of six months from the date of receipt of certified copy of this judgment, obviously, after procuring attendance of the parties.

SHAHID BILAL HASSAN
Judge

Announced in open Court on _____.

Judge

Approved for reporting.

Judge

M.A.Hassan