



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

110

CR-8246-2015

Date of decision : 28.03.2025

Santokh Singh**..... Petitioner****versus****Avtar Singh****..... Respondent****CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN**

Present: Mr. Asim Garg, Advocate
for the petitioner.

Mr. Akshay Jindal, Advocate and
Mr. Bhavya Vats, Advocate
for the respondent.

PANKAJ JAIN, J. (Oral)

1. Challenge is to be order dated 03.11.2015 passed by Additional Civil Judge Indri, whereby application filed by the plaintiff under Order XIV Rule 5 seeking framing of additional issues stands rejected.

2. Plaintiff filed suit seeking decree of declaration with the consequential relief of permanent injunction. Suit is directed against property owned by the plaintiff and further gifted in favour of the defendant by way of gift deed dated 01.07.2004. Plaintiff claimed that he was an illiterate man, had no reason to execute the gift deed, but was taken to Tehsil by defendant, who happens to be his Sala (brother-in-law). Defendant resisted the suit claiming that the suit property was in fact purchased by him in the name of plaintiff. It is the defendant who paid the sale consideration and the plaintiff is only benamidar of the defendant.



3. Trial Court framed following issues:-

“1. Whether the plaintiff is entitled to the decree for declaration to the effect that gift deed having No.1098/1 dated 1.7.2014 is illegal, null and void, ineffective and not binding upon the rights of the plaintiff and is liable to be dismissed? OPP

2. If issue no.1 is proved, whether the plaintiff is entitled to a decree for permanent injunction to the effect that defendant be restrained from dispossessing the plaintiff from the suit land, detailed in para no.2 of the plaint, illegally and forcibly? OPP

3. Whether the suit is not maintainable? OPD

4. Whether the plaintiff is not any cause of action against the defendant? OPD

5. Whether the plaintiff is not having nay locus standi to file and maintain the present suit? OPD

6. Whether the suit is not properly valued for the purposes of court fee and jurisdiction? OPD

7. Whether the plaintiff is estopped by his own act and conduct from filing the present suit? OPD

8. Whether the plaintiff has not come to the court with clean hands and has suppressed the true and material facts from the court? OPD

9. Relief.”

4. Parties led their evidence. At the time, the suit was fixed for rebuttal evidence, instance application was moved, wherein plaintiff sought framing of following additional issues:-

“1) Whether the plaintiff is actual owner of the land in question and the plaintiff including Karnail Singh etc are only Benamidar? OPP

2) Whether the defence of the defendant is barred under section 4 of the Benami transaction act? OPP”

5. Application stands rejected by the Court of the first instance holding that the applicant-plaintiff in his application himself has pleaded that the defence taken by defendant is barred under the Act



and that the application was filed at the belated stage when both the parties were alive to the rival case and thus, the application has been filed as a ploy to delay the proceedings.

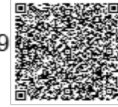
6. Counsel for the petitioner while assailing the impugned order refers to the provisions as contained under Order XIV Rule 5 CPC and submits that once specific defence was raised by the defendant with respect to the plaintiff being his benamidar, issue ought to have been framed qua the said plea raised by the defendant and denied by the plaintiff.

7. *Per contra*, Mr. Jindal submits that once parties have already led their defence knowingly well the rival case, the present application was not maintainable at the stage of rebuttal evidence/arguments and the Trial Court rightly dismissed the application filed by the plaintiff. He further submits that the plaintiff himself pleaded in the application that the defence raised by the defendant with respect to property being benamidar is barred under law and thus, there was no reason to frame issue.

8. I have heard counsel for the parties and have carefully gone through the records of the case.

9. From the plea raised in the written statement by the defendant on merits, it is explicit that the defendant claimed of having purchased the land in the name of plaintiff and others. He explicitly pleaded that he was already having surplus land and thus, was forced to purchase the land in the name of plaintiff.

10. The applicant-petitioner has rightly claimed issue with respect to the factual defence raised by the defendant and the Trial



Court ought to have framed issue regarding factual disputes between parties and should have burdened the party raising positive assertion. But the Trial Court failed to do so.

11. In view thereof, the impugned order is hereby set aside. The following two issues are ordered to be framed in addition to the issues already framed by the Trial Court:-

A) Whether the plaintiff is actual owner of the land in question and the plaintiff including Karnail Singh etc are only Benamidar? OPP

B) Whether the defence of the defendant is barred under section 4 of the Benami transaction act? OPP

12. Trial Court shall grant two opportunities to the respondent-defendant to lead evidence, if so desired. In case, defendant leads any evidence, one opportunity will be granted to the plaintiff to lead evidence in rebuttal.

13. The parties to appear before the Trial Court on the date fixed there, i.e. **17.04.2025**.

14. Disposed off, accordingly.

(PANKAJ JAIN)
JUDGE

28.03.2025

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Whether speaking/reasoned : Yes

Whether Reportable : No