

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

CR No.4554 of 2015 (O&M)  
Date of decision: 22.7.2015

Surinder Singh

..... Petitioner

Versus

Kuldeep Singh and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL**

Present: Mr. Vijay Lath, Advocate, for the petitioner.

**RAJESH BINDAL, J**

Challenge in the present petition filed by the petitioner/plaintiff is to the order dated 8.7.2015 passed by the learned court below, whereby the application filed by him under Order 14 Rule 5 CPC for framing additional issue was rejected.

Learned counsel for the petitioner submitted that he had filed a suit on 22.12.2011 for possession by way of specific performance of agreement to sell dated 5.2.2003. In the written statement filed by the defendants, the specific stand taken was that the alleged agreement to sell dated 5.2.2003 and endorsement dated 4.2.2004 are forged and fabricated by the plaintiff in connivance with the alleged stamp vendor, deed writer and the witnesses. Despite the stand being taken in the written statement filed by the defendants, at the time of framing of issues on 29.2.2012, the learned court below failed to frame any issue regarding that. Onus of which would have been on the defendants. Referring to Order 14 Rules 1, 3 & 5 CPC, it is submitted that the issues are to be framed either on fact or law and have to be on the basis of pleadings of the parties. It is further submitted that the court may at any time before passing a decree amend the issues or frame additional issue on such terms, as it may think fit. Object is to determine the controversy in the matter. As in the case in hand, the issue regarding

agreement to sell being forged and fabricated document, was required to be framed in terms of the pleadings of the defendants, the same having not been framed, deserves to be framed. The case is now at the stage of rebuttal evidence, if any, and arguments.

After hearing learned counsel for the petitioner, I do not find any merit in the present petition.

The petitioner herein filed a suit for possession by way of specific performance of agreement to sell dated 5.2.2003, on 22.12.2011, in which issues were framed on 29.2.2012. Thereafter, both the parties concluded their evidence and as admitted by learned counsel for the petitioner, the case is now fixed for rebuttal evidence, if any and arguments. In the application for framing of additional issue at that stage, the plea sought to be taken is that in the written statement filed by the defendants, it has been pleaded that the alleged agreement to sell is a forged and fabricated document. Thus the fact having been pleaded by the defendants, the issue with regard thereto had to be framed with onus on the defendants, but the court failed to frame the same. It cannot be disputed that in the suit filed by the petitioner seeking possession by way of specific performance of agreement to sell the onus to prove that there is a valid agreement existing and enforceable, is on the plaintiff. The plaintiff has to stand on his own legs, he cannot rely upon weaknesses in the case set up by the defendants. At the time of framing of issues on 29.2.2012, the court has specifically recorded that no other issue was pressed. No doubt, the court is to frame the issues on the basis of pleadings of the parties, which may be on the point of fact and law but still it is the duty of the counsels as well at the same time to apprise the court in case proper issues have not been framed, rather they are required to assist the court for the purpose, so as to avoid filing of application later on for framing of additional issue. Prayer was made at the fag end of the trial to frame additional issue putting burden thereof on the defendants. That plea had been raised by the defendants in the written statement. They could press for framing of issue arising out of their pleadings. It has further been noticed by the learned trial court in the impugned order that immediately after filing of the application by the petitioner for framing of additional issue before even that was considered and disposed of by the court, the

parties started leading evidence pertaining to the issue. In fact, the entire effort of the petitioner seems to fill in some lacuna left in the evidence already led. The object of Order 14 Rule 5 CPC is not to allow any party to move application later on for framing of additional issue just to fill in the lacuna.

There is no error in the order passed by the learned court below. The petition is accordingly dismissed.

**(RAJESH BINDAL)**  
**JUDGE**

22.7.2015

*sharmila*

(Refer to Reporter)