

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

**CR No.5270 of 2016
Decided on: 28.09.2016**

Mahavir Dutt Sharma and another

....Petitioners

Versus

State of Punjab and others

....Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Rajan Bansal, Advocate
for the petitioners.

REKHA MITTAL, J.

The present petition has been directed against order dated 11.05.2016 (Annexure P-5) passed by the Additional Civil Judge (Sr. Division), Bathinda whereby application filed by the respondents/defendants for framing of additional issues has been allowed.

Counsel for the petitioners would contend that the petitioners/plaintiffs have filed a suit for possession of land measuring 5 bighas 10½ biswas out of land measuring 15 bighas 1 biswa comprised in Khasra No.2849/2 min (0-7), 2853/1(8-12), 2854(6-2) situated in revenue limits of village Bathinda as per *Jamabandi* for the year 2002-03 or in the alternative for issuance of mandate directing the defendants to acquire the aforesaid land of the plaintiffs by initiating proceedings for acquisition and pay compensation to the plaintiffs.

The respondents filed the joint written statement dated 04.03.2010. The trial Court framed issues on 02.02.2011. Thereafter, the Court framed additional issue on 17.05.2012 reproduced at page 4 of the paperbook. The petitioners concluded their evidence and the case

was adjourned to 16.11.2013 for evidence of the defendants/respondents. It is argued that despite availing number of opportunities including last opportunity, the defendants failed to conclude their evidence but with a *mala fide* intention filed the application for framing of additional issues. It is further submitted that the application was filed by the respondents simply to gain time and the same is nothing but a dilatory tactic adopted by the respondents to prolong decision of the case. It is further submitted that the trial Court committed a serious error rather illegality in allowing the application and framing additional issues namely:-

1. Whether the suit is bad for non-joinder of necessary parties? OPD.
2. Whether the suit has not been properly valued for the purpose of Court fee? OPD.
3. Whether this Court has got no jurisdiction to try and decide the suit? OPD.

In support of his contention, he has relied upon the judgments of this Court ***“Surinder Singh vs Kuldeep Singh and others”***, 2015(8) RCR (Civil) 107, ***“Smt. Kamla and another vs Bhoop Singh and another”***, 2010(5) RCR (Civil) 674, ***“Paramjit Kaur vs Surinder Singh”***, 2012(2) PLR 332, ***“Swaran Singh and others vs Balwinder Singh and others”***, 2015(5) RCR (Civil) 645.

I have heard counsel for the petitioners and perused the paperbook more particularly the various annexures appended with the petition.

At the outset, it is pertinent to mention that counsel for the

petitioners has not disputed that in the written statement filed by the respondents/defendants they raised specific legal objections with regard to valuation of the suit for the purpose of Court fee and jurisdiction as well as suit being bad for non-joinder and mis-joinder of necessary parties. Even otherwise, the court fee is a question between the Court and the plaintiffs as it is for the Court to ensure that the plaintiff(s) has affixed proper court fee by correctly valuing the suit both for the purpose of court fee as well as jurisdiction. The mere fact that the respondents filed the application for additional issues after availing certain dates for adducing evidence or in other words at a belated stage alone is not sufficient to find fault with the order of the trial Court as it is an obligation of the Court to frame proper issues in view of pleadings of the parties as envisaged under Order 14 CPC.

Rule 1(v) of Order 14 says that at the first hearing of the suit, the Court shall after reading the plaint and the written statement, if any, and after examination under Rule 2 of Order 10 and after hearing the parties or their pleaders, ascertain upon what material propositions of fact or of law the parties are at variance, and shall thereupon proceed to frame and record the issue on which the right decision of the case appears to depend. The Court is empowered to amend and strike out issues under Rule 5 of Order 14, reads as follows:-

“5. Power to amend and strike out, issues:

(1) The Court may at anytime 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.

(2) The Court may also, at any time before passing a decree, strike out any issues that appear to it to be wrongly framed or introduced.”

A plain reading of Rule 5 makes it evident that the Court is competent to amend the issues or frame additional issues as may be necessary for determining the controversy between the parties but the said power can be exercised before passing a decree. As in the present case, the defendants have raised specific pleas by way of legal objections with regard to Court fee and necessary parties, no error much less illegality can be noticed in the order framing of additional issues at a stage when the case is still pending for recording of evidence of the defendants/respondents.

To be fair to the petitioner, counsel has referred to certain judgments passed by this Court. In *Surinder Singh's case (supra)* application for framing of additional issues was filed at a stage when both the parties had concluded their evidence and the case was fixed for rebuttal evidence, if any and arguments. In *Smt. Kamla and another's case (supra)* the application was filed for framing additional issues and additional evidence at the argument stage after six years of framing of issues and after 2 years of closure of evidence after availing ten effective opportunities. Again in *Paramjit Kaur's case (supra)* and *Swaran Singh and another's case (supra)* the application was filed after both the parties have concluded their evidence and in *Paramjit Kaur's case (supra)* it was held that where both the sides have concluded their evidence and knew about the case of each other very well while leading evidence, it cannot be said that the application filed at the belated stage of hearing of arguments for framing additional

issues was a *bona fide*. As in the present case, the case is still pending for adducing evidence by the defendants, the petitioners cannot derive any advantage to their contentions from the referred authorities. However, as has been asserted by counsel for the petitioners/plaintiffs that they closed their evidence in the year 2013 and the case is pending for evidence of the respondents/defendants since November, 2013, the trial Court is directed to look into this aspect as to why the respondents/defendants are seeking dates for the past about three years and have not concluded their evidence.

For the foregoing reasons, the petition fails and is accordingly dismissed. The trial Court would put its best efforts to get concluded evidence of the respondents/defendants expeditiously and thereafter proceed to decide the suit, in accordance with law.

28.09.2016
yakub

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No