

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

CR No.992 of 2016(O&M)

Date of decision: 10.02.2016

Sushila alias Sheela

..... Petitioners.

Versus

Charan Kaur and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.Munish Gupta, Advocate
for the petitioners.

DARSHAN SINGH, J. (Oral)

The present civil revision petition under Article 227 of the Constitution of India has been preferred against the order dated 02.01.2016 passed by the learned Civil Judge (Jr. Division), Hoshiarpur, vide which the application moved by the plaintiff for framing the additional issues has been allowed and the plaintiff has been granted opportunity to lead the evidence on the newly framed additional issues.

2. Learned counsel for the petitioner contended that the issues already framed by the learned trial Court on 19.02.2010 covered the entire controversy and there was absolutely no need to frame any additional issue. To support his contentions he has relied upon cases **Paramjit Kaur VS.**

Surinder Singh 2012(2) PLR 332, Surinder Singh Vs.

Kuldeep Singh and others 2015(3) PLR 846, Binder Kaur

and another Vs. Surjit Singh and others 2010(8) R.C.R

(Civil) 822. He further contended that in-fact, the respondent-plaintiff wants to linger on the case. They had filed the suit for seeking declaration that they are the owner in possession of the suit land on the ground that Swaran Singh shall be deemed to be dead as he was not heard for the last 40 years. But, in-fact, said Swaran Singh is still alive and is living in village Tapkara, Tehsil Gumla, Bihar. Even, his statement has been recorded by the Local Commission. Thus, he contended that the impugned order is not tenable in law.

3. I have duly considered the aforesaid contentions and have carefully gone through the paper book.

4. In all the three cases referred by learned counsel for the petitioner, the application for framing additional issues were dismissed. The said orders were upheld on the ground that as the parties were aware to the controversy, so there was no necessity to frame the additional issues.

5. Order 14 Rule 5, Code of Civil Procedure, provides that 'the Court may at any time before passing a decree can amend or frame the additional issues, which may be necessary for determining the matter in controversy between the parties'. So, the Court is competent to frame the additional issues where it feels necessity to determine the matter in controversy between the parties. Thus, there can be no prohibition to the trial Court to frame the additional issues.

6. In the instant case, the learned trial Court has framed the specific additional issue as under:-

“Whether Swaran Singh has not been heard for the last 40 years and is therefore presumed to be dead?.”

This specific additional issue framed by the learned trial Court certainly arises from the pleadings of the parties and was necessary to be framed to determine the matter in controversy between the parties.

7. So, no fault can be found with the impugned order passed by the learned trial Court framing the additional issues and affording an opportunity to the plaintiff to lead evidence on the additional issue. There is also no question of any prejudice to the petitioner as the petitioner will also have an opportunity to lead the evidence in rebuttal to the evidence adduced by the plaintiff on the additional issue.

8. Thus, I do not find any illegality in the impugned order calling for any interference by this Court while exercising the supervisory powers under Article 227 of the Constitution of India.

9. Resultantly, the present revision petition having, no merits, is hereby dismissed.

10.02.2016

S.khan

**(DARSHAN SINGH)
JUDGE**