

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

CR No.1737 of 2017

Date of decision : 30.10.2017

Gaurav Goel

...Petitioner

Versus

Ramji Dass and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sanjay Jain, Advocate for the petitioner.

Mr. Jagdeep Singh Rana, Advocate for
Mr. Babbar Bhan, Advocate for the respondent No.1.

ANIL KSHETARPAL, J. (ORAL)

The plaintiff is in revision petition against the order dated 24.01.2017 passed by the learned Civil Judge (Senior Division), Mansa.

The trial Court had framed additional issues, which are extracted as under:-

“9-A. Whether the property in dispute is self acquired as purchased by Ramji Dass, if so to what effect? OPP

9-B Whether there is any execution of the sale deed as alleged, if so, to what effect? OPP

10. Relief.”

Learned counsel for the parties have also produced before me the copy of the order dated 17.12.2014 wherein the trial Court originally framed issues, which are extracted as under:-

- “1. Whether plaintiff is entitled to declaration as prayed for?
OPP*
- 2. Whether plaintiff is entitled to joint possession of the suit land? OPP*
- 3. Whether the impugned sale deed is illegal, null and void?
OPP*
- 4. Whether Will dated 05.07.1994 executed by Koshalya is illegal, null and void? OPP*
- 5. Whether plaintiff is entitled to injunction as prayed for?
OPP*
- 6. Whether suit of the plaintiff is not within time? OPD*
- 7. Whether plaintiff has no locus standi to file the present suit? OPD*
- 8. Whether suit is not properly valued for the purpose of court fee and jurisdiction? OPD*
- 9. Whether suit is bad for non-joinder and mis-joinder of necessary parties? OPD*
- 10. Relief.”*

Order 14 Rule 1 CPC provides that the Court would frame issue on each material proposition of law or fact which a plaintiff alleges in order to show a right to sue or a defendant alleges in order to constitute his defence. Order 14 Rule 1 CPC is extracted as under:-

“ORDER XIV-

**SETTLEMENT OF ISSUES AND DETERMINATION OF
SUIT ON ISSUES OF LAW OR ON ISSUES AGREED
UPON**

1. Framing of issues— (1) Issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other.

(2) Material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to

sue or a defendant must allege in order to constitute his defence.

(3) Each material proposition affirmed by one party denied by the other shall form the subject of distinct issue.

(4) Issues are of two kinds :

(a) issues of fact,

(b) issues of law.

(5) At the first hearing of the suit the Court shall, after reading the plaint and the written statements, if any, and [181][after examination under rule 2 of Order X 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 issues on which the right decision of the case appears to depend.

(6) Nothing in this rule requires the Court to frame and record issues where the defendant at the first hearing of the suit makes no defence.”

This Court has come across various orders passed by the Courts below wherein the issues are framed only on the basis of the prayer made in the suit. This is not the requirement of Order 14 Rule 1 CPC. The issues are to be framed on the basis of the assertions made by the parties in the pleadings. The issues have to reflect the application of mind and the controversy involved in the suit. The issues are never framed placing negative onus on the party. Whichever party is asserting the particular right or fact or position of law, the onus has to be on that party to prove such fact. A look at the amended issues framed by the trial Court clearly show that the Court placed a negative onus on the plaintiff. These positive assertions were being made by the defendants.

Taking into consideration the aforesaid fact, order under challenge is set aside.

Revision petition is allowed.

The trial Court is directed to frame proper issues.

Earlier there used to be a practice in the Courts that counsel for the parties would be called upon to submit their proposed issues. However, it appears that the aforesaid practice has faded away.

The framing of the issues is important step which facilitate the trial of the case. The parties on framing the issues come to know as to what is to be proved by them respectively. The onus to prove a particular issue is also important because the opportunity to lead rebuttal evidence depends thereupon. The plaintiff is permitted to lead evidence in rebuttal only on a issue onus whereof was on the defendants.

The trial Court is requested to frame the issues after following the procedure as prescribed under Order 14 Rule 1 CPC.

30.10.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No