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

Sr. No.113

**Civil Revision No.337 of 2017
DECIDED ON: February 06, 2017**

MEHMOOD AND OTHERS

..PETITIONERS

VERSUS

NASRUDDIN AND ANOTHER

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Rakesh Kumar Sharma, Advocate,
for the petitioners.

JASPAL SINGH, J.

Through the instant revision petition preferred under Article 227 of the Constitution of India, petitioners have sought the quashing/setting aside of order dated January 04, 2017, passed by learned Additional District Judge, Mewat, vide which, an application dated January 04, 2017 moved by the petitioners for framing of additional issue has been dismissed.

2. Learned counsel for the petitioners submitted that respondent Nos.1 & 2-plaintiffs filed a suit for possession by way of redemption against Mehmood and the petitioners on the ground that land in question was

mortgaged by the predecessors-in-interest of the respondent Nos.1 & 2/plaintiffs with predecessors-in-interest of defendant Nos.2 to 4 on August 28, 1958. After contest, the suit was decreed vide judgment and decree dated August 31, 2016. Aggrieved against the said judgment and decree, the petitioners preferred an appeal before the learned District Judge, Nuh, (Mewat). During the pendency of the said appeal, the petitioners/appellants moved an application for framing of additional issues, which has been declined vide impugned order dated January 04, 2017.

3. The contention of the learned counsel for the petitioners is that the impugned order is not sustainable in the eyes of law and deserves to be set aside simply on the ground that the learned trial court did not properly appreciate the documentary evidence which otherwise does not support the pleadings of the respondents/plaintiffs . It is well settled proposition of law that an issue arising out of the pleadings of the parties can be framed at any point of time even at appellate stage, which is necessary to determine the real controversy between the parties. The First Appellate Court was also within its power to frame a fresh issue and then refer the matter to the trial court under Order XLI Rule 25 CPC for recording the evidence as well as to seek report etc.

4. This court has weighed the aforesaid contention of the learned counsel for the petitioners, but does not find any legal weight. Here it would be pertinent to mention that there is no specific plea taken in the written statement by the petitioner and defendant Nos.2 to 4 before the trial court that they are in possession of the suit land as occupancy tenants. Similarly, they have also not withdrawn the plea earlier taken by them in

their written statement to the effect that they are in possession of the suit property in the capacity of mortgagee. Thus, the issues which arise out of the pleadings of the parties have already been framed by the learned trial court and it has rightly been observed by the lower appellate court while passing the impugned order that there was no occasion to frame any such additional issues, especially in the circumstances, that the stand taken by the petitioner and defendant Nos.2 to 4 is contrary to each other.

5. No doubt, an application for recasting, re-framing or framing of additional issues can be moved at any stage but there must be some justification in this regard. But in the instant case, the filing of an application for framing of additional issues appears to be nothing but to have been filed just to delay the disposal of an appeal pending before the First Appellate Court. Thus, finding no merit in the instant petition, it stands dismissed.

February 06, 2017
Ankur

(JASPAL SINGH)
JUDGE

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