

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

CR No.4326 of 2014
Date of decision : 17.08.2017

Santosh @ Santosh Kumari

...Petitioner

Versus

Krishna and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Partap Singh, Advocate for the petitioner.

Mr. Vivek Suri, Advocate for respondent Nos.1 to 3.

ANIL KSHETARPAL, J. (ORAL)

The plaintiff-petitioner is in revision petition against the order dated 09.05.2014 (Annexure P-3) passed by Additional Civil Judge (Sr. Division), Hansi, whereby application filed by the defendants for framing the additional issue was allowed.

The learned trial Court while deciding the application filed under Order 14 Rule 5 CPC has ordered for framing of following additional issues:-

“1(a) Whether the suit of plaintiff is within limitation? OPP

4(a) Whether the suit of plaintiff is barred under Order 2 Rule 2 CPC? OPD

4(b) Whether the suit of plaintiff is bad for want of proper court fee? OPD

4(c) Whether the suit is liable to be dismissed on account

of non-joinder of necessary party? OPD”

The learned trial Court has found that such issues were not framed although these issues arise out of the pleadings of the parties.

I have seen the issues. All the issues which are sought to be added are legal. The onus to prove the suit to be within limitation is always on the plaintiff. Onus to prove remaining issues has been put on the defendants.

Learned counsel for the petitioner has submitted that the conduct of the defendants entitles them to seek additional issues. He has referred to me the various zimni orders passed by the Courts. He has stressed upon the fact that the evidence of the plaintiff as well as defendants has been concluded. He has submitted that the suit is pending almost for the last six years.

I have considered the submission. However, I am unable to agree with the same.

Order 14 Rule 5 CPC empowers the Court to add or delete issues at any point of time during the pendency of the suit before a decree is passed. In the present case, the suit is still pending. The Court has found that inadvertently such issues were not framed. In these circumstances, the framing of issues does not prejudice the case of the plaintiff.

Since the suit is pending almost for the last six years and the parties have concluded their evidence, therefore, plaintiff as well as defendants would be given only one effective opportunity each with a gap of 15 days to lead their evidence on the issues now framed and would try to dispose of the suit itself within a period of two months from today.

For the reasons recorded above, I do not find any reasons to interfere with the order passed by the Courts below.

Revision petition is dismissed.

However, the trial Court shall ensure that the suit is decided within a period referred to above.

17.08.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No