

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.4397 of 2017 (O&M)
Date of Order: 16.08.2017

Dheeraj Singh

..Petitioner

Versus

Santosh Kaur and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Shamsher Singh Gill, Advocate,
for the petitioner.

ANIL KSHETARPAL, J (Oral).

Defendant no.1 is in revision petition filed under Article 227 of
the Constitution of India.

Defendant has challenged order dated 08.12.2016, passed by
the Court, framing additional issues in terms of the pleadings of the parties.

Initially the learned trial Court framed issues, which are
extracted as under:-

- “1. Whether the plaintiffs are entitled for relief of
declaration as prayed for?OPP*
- 2. Whether the plaintiff is entitled for relief of permanent
injunction?OPP*
- 3. Whether suit is not maintainable?OPD*
- 4. Whether the plaintiffs have no locus standi to file the
present suit?OPP*
- 5. Whether the plaintiff has concealed the material facts
at the time of filing the suit?OPD*

6. Relief.”

Defendants had set up two separate Wills, one executed by his father on 20.02.1984 and the other executed by mother on 03.01.2001. However, no specific issue on the validity of the Wills was framed.

Plaintiffs filed an application under Order 14 Rule 5 of the Code of Civil Procedure for framing of the proper issues. The learned Court after examining the pleadings of the parties has directed framing of the additional issues, which are extracted as under:-

“(6) Whether the Will dated 20.02.1984 bearing vasika No.148, is legal and valid document and has been executed by Late Sh. Sadhu Singh?OPD

(7) Whether the Will dated 03.01.2001 bearing vasika No.225, is legal and valid document and has been executed by late Smt. Jangir Kaur?OPD.”

Learned counsel for the petitioner has submitted that the plaintiffs had waived their right as they did not claim the issue on the Wills when the trial Court framed issues vide order dated 15.03.2014. He has further submitted that the application filed by the plaintiffs was after a substantial delay as the suit was filed on 08.09.2014 and the issues were framed on 15.03.2014.

Order 14 Rule 5 of the Code of Civil Procedure empowers the Court to amend the issues or frame additional issues at any time. The issues are to be framed on the basis of the pleadings of the parties. The framing of the issues must reflect the application of mind. The original issues as framed by the Court does not reflect application of mind by the Court.

Now the learned trial Court has framed additional issues

because the dispute is with regard to two Wills. In these circumstances, I do not find any error in the order passed by the Court.

Learned counsel for the petitioner has submitted that the plaintiffs had waived their right to seek framing of the additional issues.

In my considered view, there is no waiver of right to claim additional issues as such right is available under the Code of Civil Procedure. In fact, it is the duty of the Court to frame proper issues. Therefore, the trial Court should have been more vigilant while framing the issues. The issues should not be framed in a mechanical manner.

Learned counsel for the petitioner has further submitted that the application suffers from huge delay.

I have considered the submissions made by counsel for the petitioner. The suit is still pending with first Court. Trial of the suit is not complete. Order 14 Rule 5 of the Code of Civil Procedure empowers the Court to frame additional issues at any point of time. Therefore, the application filed by the plaintiffs cannot be dismissed at this score.

Finding no merits in the revision petition, the same is ordered to be dismissed.

August 16, 2017
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No