

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

CR No.655 of 2015 (O&M)
Date of decision : 07.12.2017

Bir Singh (deceased) through his LRs

...Petitioners

Versus

Ravinder Saini and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Aditya Jain, Advocate for the petitioners.

Ms. Monika, Advocate for
Mr. S.K. Biriwal, Advocate for respondent Nos.1 and 2.

ANIL KSHETARPAL, J. (ORAL)

It has been noticed that the trial Courts have been framing issues only on the basis of various prayers made in the suit. Such practice is not in consonance with the provisions of the Code of Civil Procedure. Order 14 Rule 1 of Code of Civil Procedure provides that each material proposition of fact and law asserted by one party and denied by the other must give rise to a separate issue. Reference in this regard can be made to the Order 14 Rule 1 of Code of Civil Procedure. Order 14 Rule 1 of Code of Civil Procedure reads 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 [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.”*

In the present case, the plaintiffs filed a suit for permanent injunction whereas defendant filed a counter claim for possession by way of partition.

Learned trial Court framed the issues on 16.07.2013, which are extracted as under:-

“1. Whether the plaintiffs are entitled a decree of permanent injunction, as prayed for? OPP

2. Whether the counter claimant/defendant is entitled to

any relief of possession as prayed for? OPC

3. *Whether the counter claimant is entitled to 5/8 share in the suit property, being co-owner? OPC*

4. *Whether the plaintiffs have not come with clean hands before the Court? OPD*

5. *Whether the plaintiffs have concealed material facts from the Court? OPD*

6. *Whether the suit of the plaintiff is not properly valued for the purpose of court fee and jurisdiction? OPD*

7. *Whether the suit of the plaintiff is not maintainable in the present form? OPD*

8. *Whether plaintiff has no cause of action to file the present suit? OPD*

9. *Whether the plaintiff is estopped from filing the present suit? OPD*

10. *Whether the suit is time barred? OPD”*

The defendant filed an application for framing of the additional issues as the issues framed already were not covering the entire dispute between the parties and those issues were not in accordance with Order 14 Rule 1 of Code of Civil Procedure. Learned trial Court rather than considering the request and applying its mind, framed another issue which reads as under:-

“Issue No.2: Whether the counter claimant/defendant is entitled to preliminary decree of possession by way of partition? OPC”

A reading of the additional issue framed as well as issue Nos.1, 2 and 3 show that issues are only referring to the various prayers made by the respective parties. That is not the requirement of the law. In these circumstances, this Court is left with no choice but for to set aside the order

dated 08.01.2015.

Learned trial Court is directed to reconsider the matter and pass a fresh order in accordance with Order 14 Rule 1 of Code of Civil Procedure.

In view of the above, revision petition is allowed.

Parties are directed to appear before the trial Court on the date already fixed.

All the pending miscellaneous applications are disposed of, in view of the abovesaid judgment.

07.12.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No