

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

CR No.6774 of 2017

Date of decision: 03.10.2017

Rakesh Kumar

...Petitioner

Versus

Krishan Kumar and another

...Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Chetan Bansal, Advocate,
for the petitioner.

Ritu Bahri, J.

Challenge in this petition is to the order dated 18.08.2017 (Annexure P-1) passed by the Civil Judge (Junior Division), Amritsar, whereby application filed by defendant-petitioner under Order 14 Rule 5 read with Section 151 CPC for framing of additional issue, has been dismissed.

By way of aforesaid application, defendant-petitioner seeks to frame the following additional issue:-

“Whether the suit property bears Khasra No.155/7 or 157? OPP

Plaintiff-respondents have filed a suit for permanent injunction restraining defendant-petitioner from dispossessing them or damaging and destroying the suit property i.e. shop bearing No.157/7-1 also having Khana Shumari No.3845/VII-1, 44/VII-1, situated at Dhab Wasti Ram Chowk, Chint Purni, Amritsar.

The plea of defendant-petitioner is that there is no shop bearing

No.157/7-1 also having Khana Shumari No.3845/VII-1, 44/VII-1. In fact, under the garb of shop No.157-7-1, plaintiff-respondent wants to take possession of shop bearing No.155/7-1 having three shops, which are owned and possessed by defendant-petitioner.

Learned counsel for the petitioner has produce a copy of order dated 27.05.2016, whereby following issues were framed by the trial Court:-

1. Whether the plaintiffs are entitled for the relief of permanent injunction as prayed for? OPP
2. Whether the suit is legally not maintainable? OPD
3. Whether the plaintiffs have not come to the Court with clean hands and have concealed the true and material facts from the Court? OPD
4. Whether the suit is bad for mis-joinder and non-joinder of necessary parties? OPD
5. Whether the plaintiffs have no locus standi to file the present suit? OPD
6. Whether plaintiff has no cause of action to file the present suit? OPD
7. Whether plaintiff is estopped by his own act and conduct to file the present suit? OPD
8. Relief.

Learned counsel for the petitioner states that the additional issue, sought to be framed, was necessary for correct decision of the suit, as he has got information under the Right to Information Act that there is no property/shop bearing No.157-7-1.

A perusal of the aforementioned issues shows that onus to prove issue Nos.3 to 7 is on the petitioner and he can lead sufficient evidence to show, as to whether any property, as described in the plaint, exists or not. At this stage, the impugned order does not require any interference. However, defendant-petitioner is at liberty to lead substantive evidence to prove issue

Nos.3 and 6.

Disposed of accordingly.

03.10.2017
ajp

(RITU BAHRI)
JUDGE

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