

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

CR No.8005 of 2016

Date of Decision: 18.08.2017

Vijay

...Petitioner

VERSUS

Krishanjeet Singh and Anr.

...Respondents

BEFORE : HON'BLE MS. JUSTICE RITU BAHRI

Present : Mr.Ajay Jain, Advocate, for the petitioner.

Mr.Padamkant Dwivedi, Advocate, for respondent No.1.

RITU BAHRI, J. (Oral)

Petitioner has come up in revision for setting aside the order dated 02.11.2016 passed by Civil Judge (Jr.Divn.) Hisar vide which application filed by plaintiff/respondent No.1 under Order 14 Order 5 read with Section 151 CPC for framing of additional issues had been allowed.

The additional issues have been framed as under:-

Issue No.1(A)

Whether the plaintiff is entitled to get the decree of rendition of accounts of Rent from the defendants as claimed in the plaint? OPP.

Issue No.1(B)

Whether the plaintiff is entitled to recover of amount as claimed in the plaint? OPP.

The brief facts of the case are that on 31.10.2012, plaintiff/respondent No.1 filed a suit for partition by metes and bounds and delivery of possession of 1/3rd share of a building constructed upon plot No208 measuring 21' X 75' situated in Scheme No.3 of Improvement

restraining the defendants not to cause damage and alienate any specific portion of the aforesaid property without partition and for rendition of account directing the defendants to render the accounts of Rent being received by them from the tenants and further for recovery of amount to the extent of share of the plaintiff that may be found due after rendition of account.

The defendant No.1/petitioner in its written statement inter alia submitted that in fact the plaintiff and defendant No.2 had rented out the entire building to the petitioner on a monthly Rent of Rs.5000/- with the permission to sublet the same to any person vide Rent Note dated 22.11.2010. The answering defendant had constructed a new building after incurring huge expenditure. Plaintiffs right to 1/3rd share of the total rental income was denied. It was further averred that the plaintiff as well as defendant No.2 were having no concern with the tenants. Accordingly, a prayer was made for dismissal of the suit.

The trial Court on 16.12.2013, framed the following issues:

1. Whether the plaintiff is entitled for partition and delivery of possession of the property in dispute on the grounds as mentioned in the plaint? OPP.
2. If issue No.1 is proved, whether the plaintiff is entitled to the injunction as prayed for? OPP.
3. Whether the suit of the plaintiff is false, frivolous and vexatious ? OPD.
4. Whether suit is not maintainable being hit by partial partition? OPD.
5. Whether suit is bad on account of non joinder and mis-joinder of necessary parties? OPD.
6. Whether the suit is under valued for the purposes of Court fee and jurisdiction? OPD.

7. Whether plaintiff has no locus standi to filed the present suit? OPD.
8. Whether the plaintiff has no cause of action to file the present suit? OPD.
9. Whether plaintiff is estopped from filing the present suit by his own act and conduct? OPD.
10. Relief.

After framing of issues, learned trial Court has allowed the abovesaid application on the ground that the plaintiff had filed the present suit for partition by metes and bounds and delivery of possession to the extent of 1/3rd share. The plaintiff had also sought relief in plaint, for rendition of account of Rent being received by them from the tenant of suit property and had further sought for recovery of amount to the extent of share of plaintiff, that may be due after rendition of account. In the written statement, filed by defendant No.2 rented out 2/3 share of the premises to the defendant No.1 on the Rent in sum of Rs.5,000/- per month. Hence, issues have been framed vide Order 16.12.2013 which were not covered under the issues framed by the Court vide order dated 16.12.2013. As far as maintainability of the application was concerned, the said application had been filed by the applicant at belated stage i.e. at the stage of evidence of the defendants. But Order 14 Rule 5 CPC, empowers the Court to frame issue at any stage where Court was satisfied that any issue was left which was to be decided between the parties. Therefore, arguments raised by learned counsel for the respondent/defendant was not sustainable and the present application was maintainable.

to be dismissed. A reference can be made by the judgment of this Court in the case of Hari Chand Vs. Krishan Kumar 1998(3) RCR (Civil) 186 wherein, provision with respect to additional issues were considered in a case which is fallen under Order 14 Rule 5 CPC wherein additional issues can be framed at any stage of the suit and it has further been held that prayer cannot be declined on the ground that plaintiff had already led his evidence. In paragraph II it has been mentioned as under:

“ The plaintiff filed an application to frame an additional issue namely "whether the entries in the Jamabandi qua suit land being illegal, null and void and not binding on the plaintiff ?". This application has been rejected by the trial Court on the ground that issue No. 1 covers the additional issue sought to be framed and that the plaintiff has already led his evidence qua his possession. Issue No. 1 is to the effect "whether the plaintiff is in possession of the suit land as tenant?". The issue which the plaintiff now wanted to be framed is in regard to the entries in the jamabandis. If the entries in the Jamabandis are not to be held illegal and not binding then presumably a rebuttable presumption may be drawn in view of the entries in the Jamabandis in regard to possession. Therefore, I do not think that issue No. 1 covers the question whether the Jamabandi entries are illegal, null and void. This is to be decided separately. Prima facie the entries in the revenue record show the possession of the parties in whose names the entries have been made. I am also not in a position to agree with the learned Civil Judge that this issue cannot be framed since the plaintiff has already led his evidence. Under Order 14 an issue can be framed at any time before passing of the decree. The application to frame

an additional issue which arises on the basis of the pleadings cannot be disallowed on the ground that the plaintiff has already let in evidence. Rule 5 of Order 14 is clear that the issue can be framed at any time before the passing of the decree.”

In Om Parkash Vs. Gurmit Singh 2008(2) RCR (Civil) 455, it has been held that additional issues were framed and under Order 18 Rule 17 CPC, there is a provision for recalling of witness for cross-examination after framing additional issues. In this case petitioner filed a suit for recovery of an amount from the respondent on the basis of a pronote and after filing the written statement, an additional issue was framed as under:

“ Whether the plaintiff is a money lender and does possess a valid money lending licence? If so, its effect? OPD?

After framing of the final issues, an application to lead additional issue has been filed which has been allowed by the trial Court. In paragraph 8 of this judgment (Om Parkash Supra), it has been observed as under:

“In Rishi Kumar v. Suresh Chand 1992 (1) PLR 254, this Court has viewed that where defendants application for re settlement of the issue is allowed, then it gives a fresh right to the petitioner to file again a list of witnesses fresh. Similarly, in the case of S.S.S.Durai Pandian vs. S.A.Samuthira Pandian AIR 1998 Madras 323, it has been held that recalling plaintiff for re-cross examination can be exercised by the Court on an application of the defendant and would not be restricted only on its own motion. Accordingly, I am of the view that discretion has been rightly exercised by the trial Court to direct recall of the plaintiff for the purpose of limitation cross-

examination. This discretion is available with the trial Court and appears to have been justifiable exercised. Counsel for the petitioner has not been able to point out anything, which may call for interference in the impugned order.

In Ranbir Singh and others Vs. Tara Chand and others 2009(4)

RCR (Civil) 92, the regular second appeal was allowed on the question that after framing of additional issues it was necessary for giving opportunity to the parties to lead their evidence qua said issues and in case parties had not made any statement to the effect that they do not want to lead fresh evidence on account of reframing of the issues. In these circumstance, the right of the defendants to prove additional issue would be scuttled. Thereafter, the appeal was allowed and the matter was remanded back to the trial Court.

However, in the present case, issue No.1A and 1B have been rightly framed during the pendency of the suit as in the plaint itself specific relief has been sought with regard to rendition of accounts and recovery of suit property which was given by the plaintiff and defendant No.2 on rent out of 2/3 share of the premises to the defendant No.1 in a sum of Rs.5,000/- per month but issues with this regard has not been framed which was necessary for the just and proper decision of the case.

Hence, in the suit the main dispute between the parties is with regard to seeking relief of rendition of accounts of rent and further recovery of the amount to the extent of his share, the additional issues have been rightly framed to decide the dispute finally between the parties by giving opportunity to both the parties to lead evidence on additional

So, in the light of reference and going through the impugned order 02.11.2016 (Annexure P-3) , the orders of the trial Court does not reflect any material irregularity or perversity which warranting interference. Hence the present revision stands dismissed.

18.08.2017
anil

(RITU BAHRI)
JUDGE

<i>Whether speaking/reasoned :</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>