

the plaint. Defendants No.1 to 3 have no right to interfere in the peaceful possession of the suit property. Suit for mandatory injunction was also filed directing defendants No.1 and 2 to hand over the vacant possession of the house and compound as per site plan. Permanent injunction was also sought restraining the defendants No.1 to 3 from alienating and creating any encumbrance over the suit property.

[3]. In the written statement filed by defendants No.1 and 2, they claimed that the suit is liable to be dismissed on the score that the plaintiffs intentionally just to defame the replying defendants have wrongly mentioned the husband name of defendant No.1 as Sukhwinder Singh @ Devinder Singh while the plaintiffs are in very much knowledge that defendant No.1 is wife of Harnek Ram, who was real brother of plaintiffs and defendants No.4 and 5. Plaintiffs just to malign reputation and character of the defendants intentionally gave wrong names of defendant No.1. In para no.9 of the preliminary objection in the written statement, the defendants claimed that they are co-owner in possession of the suit property and no injunction can be granted against the co-owner as each of the co-owner is deemed to be in possession over every inch of the joint property. After the death of Harnek Ram (husband of defendant No.1 and father of defendant No.2), the defendants have

succeeded and inherited the estate of Harnek Ram, who was brother of plaintiffs and defendants No.4 and 5.

[4]. Initially the following issues were framed by the trial Court vide order dated 20.08.2015:-

- “1. Whether the plaintiffs are entitled to relief of declaration as prayed for?OPP*
- 2. Whether the plaintiffs are entitled to relief of permanent injunction as prayed for?OPP*
- 3. Whether suit of plaintiffs is not maintainable in the present form?OPD*
- 4. Whether the plaintiffs have concealed the material facts from the Court?OPD*
- 5. Whether suit of plaintiffs is bad for mis-joinder of necessary parties? OPD*
- 6. Relief.”*

[5]. Defendants filed an application on 27.04.2017 seeking to get framed the following additional issues:

- “i. Whether defendant no.1 is wife of Davinder Singh @ Sukhwinder Singh? OPP*
- ii. Whether defendant no.1 is widow of Harnek Ram? OPD*
- iii. Whether defendant No.2 is daughter of defendant No.1 Parkash Kaur and Harnek Ram from their matrimonial relations?OPD*
- iv. Whether suit is barred by estoppel?OPD*
- v. Whether plaintiffs have no cause of action to*

file this suit? OPD”

[6]. The trial Court dismissed the prayer vide the impugned order after noticing that the issues were framed on 20.08.2015. Issue No.1 was in respect of entitlement of the plaintiff with regard to relief of declaration and the issue No.1 will cover each and every fact of the plaint and averments made in the written statement. Plea regarding estoppel was never raised in written statement. Since six of the defendant witnesses have been examined, therefore, it was not thought appropriate to allow such a prayer at such belated stage. In the event of acceptance of application for framing of additional issues, the same would result in *de novo* trial. Looking to the nature of litigation involved between the parties, original issues framed on 20.08.2015 would suffice to serve the purpose of both the parties as all the necessary pleas are covered under the said issue.

[7]. Learned counsel for the petitioner by relying upon **Hari Chand vs. Krishan Kumar, 1998(3) R.C.R. (Civil) 186**; **Fauja Singh and others vs. Jaswant Singh, 1978 PLR 456** and **Kaushik Kumar Luthra vs. Harish Bala, 1993(2) PLR 653** contended that additional issues can be framed at a later stage also when such issues are necessary for just decision of the case.

[8]. I have considered the aforesaid precedents. There

cannot be any denial to the observations made in the said case. The facts and circumstances of each case have to be seen. There cannot be any denial to the proposition that issues can be framed at a later stage also, if such issue arises for proper disposal of the case. When the subject matter is covered under the original issue, no such indulgence can be granted as the same would have the effect of *de novo* trial between the parties as in the present case, plea of estoppel has not been taken in the written statement. There was no foundation in the written statement. Six of the defendants' witnesses have already been examined. Issue No.1 in the original issue would cover the controversy in entirety.

[9]. At this stage allowing the application would result in *de novo* trial and the same cannot be the intention of any statute or precedents in view of facts and circumstance of each case.

[10]. For the reasons recorded hereinabove, the present revision petition is found to be totally devoid of merits and the same is accordingly dismissed.

May 30, 2018

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No