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

**Civil Revision No.4574 of 2018 (O&M)
Date of Decision: 26.09.2019**

Chander Bhan

.....Petitioner

Vs

Satpal Sindhi and others

....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Karan Garg, Advocate
for the petitioner.

Mr. M.S. Uppal, Advocate
for respondents No.1 and 2.

RAJ MOHAN SINGH, J.

[1]. Petitioner has preferred this revision petition against the order dated 21.04.2018 passed by the Addl. Civil Judge (Senior Division) Patiala, vide which the prayer for framing additional issues at the instance of the plaintiff/petitioner was dismissed.

[2]. Plaintiff filed a suit for mandatory injunction directing defendants No.1 and 2 to hand over the vacant possession of house and for declaration that the affidavit dated 22.06.1968 alleged to have been sworn by Sh. Atma Ram and alleged conveyance deed dated 16.10.1968 are forged and fabricated and does not bind rights of the plaintiff.

[3]. Perusal of the record would show that the plaintiff's evidence has already been closed on 31.05.2017. Defendants' evidence is going on. The application for framing additional issues came to be filed on 01.02.2018 on the premise that issues were framed on 11.05.2015 and thereafter additional issues were also framed on 15.10.2016. At the time of cross-examination of Satpal Sindhi defendant No.1, the plaintiff came to know that material issues have not been framed. Plaintiff filed the application for framing following additional issues:-

- “a) Whether Sh. Atma Ram had sworn an affidavit dated 22.06.1968 giving consent for the transfer of property number 292 in the name of Sh. Ghansham Dass. If so, its effect? OPD 1&2*
- b) Whether the conveyance deed dated 16.10.1968 has been issued in pursuance of the affidavit dated 22.06.1968? OPD 1&2*
- c) Whether the possession of defendant no.1 and 2 is continuous, lawful, peaceful, actual, uninterrupted and hostile making the defendant no.1&2 owners of the suit property on the basis of adverse possession? OPD 1&2.”*

[4]. Perusal of the aforesaid issues would show that the onus to prove the aforesaid issues is fastened upon the defendants. The original issues were framed to the following effect:-

- “1) Whether plaintiffs are entitled to mandatory injunction as prayed for? OPP*
- 2) Whether plaintiffs are entitled to declaration as prayed*

for? OPP”

[5]. Perusal of the original issues would show that the scope of proposed issues would be covered under the original issues, even the proposed issues are to be proved by the defendants. The plaintiff seeks to frame additional issues thereby obligating the defendants to discharge the onus. In case the defendants fail to discharge the onus, the plaintiff will be benefitted. It could not be understood as to how the plaintiff can seek indulgence of this Court for framing additional issues in order to fill lacuna in the case of the defendants. The original issues framed can be tested as per requirement of Section 101 and 102 of the Evidence Act.

[6]. In the written statement filed by the defendants besides taking other pleas, they have also set up a plea of their ownership on the basis of adverse possession. When both the parties knew case of each other, framing of issues would be redundant. Otherwise the original issues would suffice to cover the scope of proposed issues. Even the proposed issues are revolving around the obligation to be discharged by the defendants. If the defendants themselves are not agreeing to framing of additional issues, it does not lie to the mouth of the plaintiff to agitate further as in the event of not proving the aforesaid requirement, the defendants have to suffer. Even

otherwise, when parties are alive to the controversy and have produced some evidence, the Court can still adjudicate upon the point particularly when no prejudice is going to be caused to the parties.

[7]. On the strength of *P. Purushottam Reddy vs.M/s Pratap Steels Ltd., 2002(2) R.C.R. (Civil) 70; Ram Niwas and anr. vs. Rakesh Kumar, 1982(1) R.C.R. (Rent) 134; Jagan Nath vs. Pushkar Raj, 1993(1) R.R.R. 487* and *Jitender Kumar vs. Suresh Kumar and others, 2018(1) PLR 363,*

framing of additional issues in my considered opinion is not required as the parties to the *lis* knew the case of each other.

[8]. For the reasons recorded in the impugned order, I do not see any justification to interfere with the reasons as the impugned order is not found to have been suffered with any error or jurisdiction or perversity. This revision petition is accordingly dismissed.

September 26, 2019

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Whether speaking/reasoned
Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No
Yes/No