

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No. 592 of 2019
Date of decision: 26.3.2019

Jagan Nath

.. Petitioner

v.

Murari Lal and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. R. D. Yadav, Advocate for the petitioner.

...

AVNEESH JHINGAN, J. (Oral)

The present civil revision petition has been filed being aggrieved of the order dated 7.1.2019 passed by Civil Judge (Junior Division), Rewari (hereinafter described as 'Civil Court') dismissing the application filed under Order XIV Rule 5 of the Code of Civil Procedure, 1908 (for short, 'CPC').

The facts are summarized below:

Respondent No. 1-plaintiff (hereinafter described as 'the respondent') filed a suit for declaration and permanent injunction. The petitioner-defendant No. 1 (hereinafter described as 'the petitioner') filed written statement. On completion of the pleadings, the Civil Court framed the following issues:

“1. Whether the plaintiff is entitled to a decree for declaration as prayed for on the grounds mentioned in the
plaint ?OPP

2. Whether the plaintiff is entitled to a decree for permanent injunction as prayed for on the grounds mentioned in the plaint ?OPP
3. Whether the suit is not legally maintainable in the present form ? OPD
4. Relief.”

During the pendency of the suit, an application was moved by the petitioner stating that following additional issues should be framed:

- “1. Whether the suit is barred by Order 2 Rule 2 and Section 11 of CPC? OPD
2. Whether the defendants No. 2 to 5 are bonafide purchaser for value and consideration? OPD
3. Whether the plaintiff is estopped by his act and conduct to file the present suit? OPD
4. Whether the suit is bad for non joinder of necessary parties? OPD
5. Whether the suit is barred by limitation? OPD
6. Whether the deficient court fees has been affixed on the plaint? OPD”

The application was dismissed by the Civil Court stating that issues with regard to ad valorem court fee and limitation have already been dismissed by the court and the same cannot be framed. The issue with regard to the maintainability of the suit can be decided in the issues already framed. Aggrieved of the order, the present civil revision petition has been filed.

Learned counsel for the petitioner states that the respondent had earlier filed a suit on the same subject-matter which was dismissed and even the appeal against that order also met the same fate. He argues that the second suit would not be maintainable in view of the earlier judgment and decree, hence framing of the additional issues is necessary.

The contention raised is not well founded. Order XIV Rule 5 CPC is reproduced below:

“ ORDER XIV

**SETTLEMENT OF ISSUES AND DETERMINATION
OF SUIT ON ISSUES OF LAW OR ON ISSUES
AGREED UPON**

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5. Power to amend and strike out issues.- (1) The Court may at any time before passing a decree amend the issues or frame additional issues on such terms as it thinks fit, and all such amendments or additional issues as may be necessary for determining the matters in controversy between the parties shall be so made or framed.

(2) The Court may also, at any time before passing a decree, strike out any issues that appear to it to be wrongly framed or introduced.”

As per the aforesaid Rule, the Court is empowered to frame additional issues if it thinks necessary to decide the issues arising in the suit. The issues have already been framed by the Civil Court and these issues include one issue with regard to maintainability of the suit. The issues are framed and on that basis arguments are made. It is not that for every

argument a separate issue is to be framed.

Learned counsel for the petitioner failed to show that how the petitioner is still aggrieved of the impugned order, in spite of the fact that the Civil Court stated that the issues intended to be raised are already covered by the issues framed earlier.

No interference is called for in the impugned order.

The present revision petition is dismissed.

(AVNEESH JHINGAN)
JUDGE

26.3.2019
mk

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