

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

CR no.7636 of 2016 (O&M)

Date of Decision: 25.02.2019

Behari Lal and another

....Petitioners

Vs.

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Kartik Gupta, Advocate, for the petitioners.
Mr. Rohiteshwar Singh, Advocate, for respondent no.2.
Mr. Shrey Goel, Advocate, for respondents no.3 and 4.

Amol Rattan Singh, J (Oral)

By this petition, the petitioners have challenged the order of the learned Civil Judge (Jr. Divn.), Hoshiarpur, dated 04.10.2016, by which the application of the petitioners (plaintiffs in the suit), seeking that additional issues be framed, has been dismissed, on the ground that the application was filed at the fag end of the trial, after evidence had been led by all the parties.

At the time when notice of motion was issued in this petition on 11.11.2016, learned counsel for the petitioners had argued that if the application for framing of additional issues is allowed, the petitioners would not lead any fresh evidence.

Learned counsel for the respondents earlier having put in appearance, today reiterates the reasoning given by the trial court, to the effect that the application is far too belated.

A perusal of the order of the trial court dated 23.10.2010

(Annexure P-9), shows that following issues were framed:-

- “1. Whether the plaintiffs are entitled to relief of declaration as prayed?OPP
2. Whether the plaintiffs are joint owner in possession of property in dispute as prayed for?OPD
3. Whether the suit is not maintainable as prayed for?OPD
4. Whether the plaintiffs have not come to the court with clean hands as they suppressed material facts from the court as prayed for?OPD
5. Whether no notice under Section 80 CPC was served by the plaintiffs upon the defendants as prayed for?OPD
6. Whether the site plan attached with the plaint is incorrect as prayed for?OPD
7. Whether the plaintiffs have no locus standi to file the present suit as prayed for?OPD
8. Whether the suit is barred by limitation as prayed for?OPD
9. Whether this court has no jurisdiction to entertain and to decide the present suit as prayed for?OPD
10. Whether the suit is bad non-joinder of the parties as prayed for?OPD
11. Relief.”

The issues now sought to be framed are as follows:-

- “1. Whether Lachhman Dass, father of the plaintiffs, was not the son of Nathu and was a stranger to the family of Saudagar?OPD2
2. Whether Puran executed a gift deed dated 20.02.1962 in favour of the plaintiffs ?OPP
3. Whether there was any settlement in between the plaintiffs and Sadhu Ram regarding the suit property?OPD 3 &4
4. Whether Findi Ram purchased the suit property through writing dated 05.04.1962? OPD 3&4
5. Whether the defendant no.3 and 4 have become the owner of the suit property by way of adverse possession?OPD 3&4”

Learned counsel for the petitioners submits that the additional issues are in fact necessary in view of the fact that in the counter claim filed by the respondents, they have firstly stated that they have taken a plea of adverse possession of the suit property, they also having challenged the gift deed relied upon by the petitioners in their favour, and that the father of the petitioners, i.e. Lachhman Dass, was actually a stranger to the family.

Rule 5 of Order 14 of the Code of Civil Procedure, reads as follows:-

“O14 R5:- 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.”

Thus, the aforesaid Rule provides that issues may be framed at any time by a Court if they are considered to be necessary.

In the opinion of this Court, though naturally the phrase 'any time' would need to be interpreted appropriately, ensuring that the issues being sought to be framed are not frivolous ones simply to delay proceedings, however, in the present case, in view of the fact that the respondents (defendants in the suit) are stated to have taken the aforesaid pleas in their counter claim (as is not denied before this Court) and equally importantly, the petitioners submit that no further evidence actually needs to be led in respect of the issues to be framed, such evidence pertaining to

those issues already otherwise having been led *qua* the issues already framed, I see no reason to disallow this petition.

Consequently, this petition is allowed, with the impugned order set aside. The trial court is directed to frame the additional issues sought by the petitioners, as per their application for that purpose, with it however, made clear that the petitioners are not at liberty to lead any further evidence, the application for framing the additional issues having been made at the fag end of the trial, and in any case learned counsel for the petitioners very fairly having made a statement to that effect.

25.02.2019
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(Amol Rattan Singh)
Judge

Whether speaking/reasoned : Yes
Whether reportable : Yes