

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

CR no.1380 of 2019

Date of Decision: 28.02.2019

Sajjan Singh

...Petitioner

Vs.

Late Piara Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. P.K. Kukreja, Advocate, for the petitioner.

Amol Rattan Singh, J (Oral)

By this petition, the petitioner challenges the order of the learned trial court dated 07.02.2019, by which his application filed under Rules 1,3 and 5 of Order 14 of the CPC, seeking reframing of issues in a suit filed by the respondent, has been dismissed.

In the detailed impugned order, the learned trial court has stated that earlier when the petitioners' evidence had been closed, he approached this Court by way of CR no.7187 of 2016, with this Court having allowed that petition thereby allowing the petitioner to lead evidence subject to payment of costs of Rs.10,000/-.

The petitioner not having paid the costs, again an order was passed by the trial court closing his evidence, leading to filing of CR no.5095 of 2018 by him, which was again allowed subject to payment of costs of Rs.30,000/-, which the petitioner yet again did not pay, with his evidence again having been closed.

Other than the above, the petitioner had also filed an application

earlier under Order 14 of the CPC, seeking that additional issues be framed, which was partly allowed on 22.10.2018, with the following three issues framed by the trial court:-

“10(a) Whether the counter-claimants/defendants no.2 to 6 are entitled to decree for possession to the extent of $\frac{1}{2}$ share out of the land measuring 6 kanal $\frac{2}{3}$ marla fully detailed in the headnote of the plaint?OPCC

10(b) Whether the counter-claimants/defendants no.2 to 6 are entitled to decree for declaration, as prayed for?OPCC

10(c) Whether the counter-claimants/defendants no.2 to 6 are entitled to permanent injunction, as prayed for?OPCC”

In the aforesaid circumstances, the trial court has held that the application now filed seeking reframing of issues is only to delay the matter.

As regards the issues now sought to be “re-framed”, effectively the petitioner is seeking three following issues to be framed, i.e. basically it is an application again for framing of additional issues:-

“a. Whether the plaintiff is in possession of the suit property?OPP

b. Whether the defendants no.2 to 6 are in joint possession of the suit property ?OPCC

c. Whether the present suit is barred by *res judicata* ?OPP”

On issue '(a)' herein above, the trial court has held that the respondent herein, i.e. plaintiff, has claimed himself to be the owner in possession of the suit property and has alternatively prayed that if he is not found to be in possession, he be granted the relief of possession whereas issue no.1 already framed on 27.05.2014, is to the effect that whether the plaintiff is entitled to the declaration prayed for, and issue no.11 is on the

relief to be granted.

Thus, in the impugned order, it has been stated that if the alternative relief of possession is to be granted to the respondent-plaintiff if he is not found to be in possession, it can be so granted under the issue of relief which is to be given to him.

As regards the issue of the suit being barred by *res judicata*, it has been stated in the impugned order that the petitioner (defendant no.1 in the suit) has taken no such plea even in his written statement and consequently there is no ground to now frame such an additional issue.

The third issue (being issue '(b)' reproduced hereinabove), as is now sought to be added by the petitioner, on whether defendants no.2 to 6 are in joint possession of the suit property, that part has not been specifically dealt with in the impugned order.

Learned counsel for the petitioner submits before this Court that though undoubtedly earlier also additional issues had been framed on an application filed by the petitioner, and of course evidence had been closed twice earlier with the costs ordered to be paid by this court not paid, the fact of the matter is that the petitioner was being represented by a learned counsel who (as contended before this Court), was about 93 years old.

He consequently submits that the trial court has erred in passing the impugned order.

Respondent no.1, i.e. the plaintiff, being on caveat, Mr. Surender

Dhull, learned counsel appearing for him, has reiterated the reasoning given by the trial court in the impugned order, to submit that such like applications filed by the petitioner are only to delay proceedings and for no other reason; and as regards the second issue that he seeks to now get framed, i.e. whether defendants no.2 to 6 (also respondents no.2 to 6 in the present petition), are in possession of the property, he submits that they have also filed a counter claim which actually they are not pursuing any longer (as contended), and consequently, if at all they were aggrieved of any non-framing of an issue on them being in possession of the suit property, such application should have been filed by them and not by the present petitioner (defendant no.1 in the suit) .

Having considered the matter, as regards the petitioner being earlier represented by a counsel who is stated to be 93 years old, nothing further needs to be said by this Court, the petitioner obviously having engaged the learned counsel himself; and further, as regards the additional issue on *res judicata* being framed, learned counsel for the petitioner not having factually refuted the contention of the learned counsel for the respondent-caveator, that the said plea has not been taken even in his written statement, I see no reason to allow that claim, though of course to the extent that any such evidence, if it has been led, on the issue of maintainability of the petition, the trial court would deal with that issue (if any evidence has been led on it).

As regards issue '(a)' that is sought to be framed, i.e. whether

the plaintiff is in possession of the suit property or not, I do not agree with the reasoning given by the trial court, to the effect that it can be dealt with simply with in issue no.11 on the relief to be granted to the petitioner.

Also, though correctly, as learned counsel for the respondent-caveator has stated, that for framing an issue on whether defendants no.2 to 6 are in joint possession of the suit property or not, such application should have been filed by them in terms of their counter claim, however, since the petitioner is also a defendant, I do see the merit in the aforesaid contention of such an issue being framed (without of course commenting on whether there is any actual merit in what is stated by the petitioner or by his co-defendants no.2 to 6, which would be gone into by the trial court on the basis of the evidence led).

Having said that, the application under Order 14 now having been filed by the petitioner before the trial court at a stage when his evidence had been closed twice earlier, with him not having paid the costs ordered to be paid by this court in two revision petitions, he cannot be allowed to take advantage of leading any further evidence, simply by filing an application seeking framing of additional issues/re-framing of issues.

Consequently, in view of the fact that issues can be framed at any stage if a court feels that the such issues arise and need to be decided, this petition is allowed to the extent that, upon the petitioner paying costs of Rs.20,000/-, only issues '(a)' and '(b)' reproduced herein above (and in

paragraph 2 of the impugned order), would be framed by the trial court immediately, after which the respondent-plaintiffs would be at liberty to lead any evidence *qua* the said issues, if they wish to, with the petitioner having the opportunity to cross-examine any witnesses examined by the respondents-plaintiffs on those two issues, but with it made absolutely clear that such cross-examination would be completed within one month of the respondents-plaintiffs closing their evidence with respect to the said issues (if any evidence is so led).

No request for adjournment whatsoever beyond one month of such evidence being closed by respondent no.1 herein, shall be entertained by the trial court for any reason whatsoever, and if any such application requesting for an adjournment is made, it would be specifically disallowed and further chance of cross-examination beyond one month denied to the petitioner.

To repeat, the petitioner in any case shall not be allowed to lead evidence, in the aforesaid circumstances of him having not led evidence on the issues earlier framed despite orders having been passed by this court in two revision petitions.

It is also made clear that defendants no.2 to 6 not having filed any such application for framing an additional issue on their joint possession of the suit property, they would not be allowed to lead any evidence *qua* that issue.

It is further made clear that if any application now moved by

respondents no.2 to 6 for leading such evidence, it will be treated to be one moved on hindsight and shall be rejected, the contention of the learned counsel for the respondent-caveator being that it would actually be in connivance with the present petitioner at this stage, which contention I agree with.

28.02.2019

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(Amol Rattan Singh)

Judge

Whether speaking/reasoned : Yes

Whether reportable : Yes