

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No. 3610 of 2019
Date of decision: 29.5.2019

Harbans Singh

.. Petitioner

v.

Hardev Singh and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Shashank Sharma, Advocate for the petitioner.

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AVNEESH JHINGAN, J. (Oral)

The civil revision petition has been filed being aggrieved of the order dated 23.4.2019 passed by the Additional Civil Judge (Senior Division), Rupnagar (hereinafter described as 'the Civil Court') allowing the application filed under Order XIV Rule 5 of the Code of Civil Procedure, 1908 (for short, 'CPC') for framing additional issues 2A and 2B.

The facts in brief are that the litigation is between brothers and sisters with regard to the property. The petitioner-plaintiff filed a suit for declaration to the effect that he and respondents No. 1 to 3 (defendants No. 1 to 3 in the suit) are the co-sharers in joint possession of the land detailed in the head note of the plaint. Further declaration was sought that mutation No. 4464 dated 28.4.2005 in favour of Hardev Singh (respondent No. 1) of inheritance from Mangal Singh, i.e. father of the parties was on the basis of forged and fabricated will dated 3.9.1996 alleged to be registered and

Page No. 27 with Sub Registrar, Anandpur Sahib, District Ropar in favour of defendant No. 1-Hardev Singh.

In the suit, the following issues were framed on 26.8.2016:

- “1. Whether the plaintiff is entitled for declaration as prayed for ?OPP
2. Whether the plaintiff is entitled to permanent injunction as prayed for ?OPP
3. Whether the suit is not maintainable in the present form ?OPD
4. Whether the plaintiff has no cause of action to file the present suit ?OPD
5. Whether the suit has not properly valued for the purposes of court fee and jurisdiction ?OPD
6. Relief.”

The evidence was completed by the parties on 28.2.2019. Defendant No. 1-Hardev Singh moved an application under Order XIV Rule 5 CPC for framing additional issues. The application was allowed and the following two additional issues were framed:

- “2A. Whether deceased Mangal Singh, during his life time executed a registered Will dated 3.6.1996 in favour of Hardev Singh?OPD1
- 2B. Whether suit is well within the prescribed period of limitation ?OPP”

Aggrieved of the said order, the present revision petition has been filed.

Learned counsel for the petitioner argues that the entire

endeavour of the respondents is to delay the proceedings and issue No. 2A now framed is already covered under issue No. 1 framed earlier.

The contention raised by learned counsel for the petitioner is not well founded. The bone of contention in the suit for declaration filed by the petitioner-plaintiff was with regard to the registered will dated 3.9.1996 executed by Mangal Singh. No specific issue was framed by the Civil Court. Issue No. 1 relied upon by learned counsel for the petitioner is a general issue only to the effect whether the plaintiff is entitled for declaration as prayed for. As the registered will would go to the root of the controversy, the Civil Court deemed it necessary to frame a specific additional issue decide the issue between the parties effectively.

Order XIV Rule 5 CPC is quoted below:

“ ORDER XIV

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

xx

xx

xx

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 at any time before passing

a decree can amend or frame the additional issue as may be necessary for determining the controversy between the parties. The bone of controversy in the present case is the registered will. The Civil Court has allowed the application acting within the four corners of Order XIV Rule 5 CPC.

No prejudice is caused to the petitioner by framing additional issues as the Civil Court has granted opportunity to both the parties to adduce their evidence with regard to the additional issues. The apprehension raised that the entire endeavour of the respondents is to delay the proceedings has been taken care of by the Civil Court by limiting the opportunities to adduce evidence.

No interference is called for in the impugned order.

The revision petition is dismissed.

(AVNEESH JHINGAN)
JUDGE

29.5.2019
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No