

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

**C.R. No.2005 of 2018 (O&M)
Date of Decision.30.01.2019**

Sarjeet and others

...Petitioners

Vs

Sultan and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Abhilaksh Grover, Advocate
for the petitioners.

Mr. Sanjiv Gupta, Advocate
for the respondents.

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AMIT RAWAL J. (ORAL)

C.M. No.6169-CII of 2018

The application for impleading the legal representatives of deceased-petitioner No.3 is allowed subject to all just exceptions and the legal representatives of petitioner No.3 are allowed to be brought on record for the purpose of adjudication of the present revision petition.

C.R. No.2005 of 2018

The present revision petition is directed against the impugned order dated 13.10.2017 (Annexure P-8) whereby application of the petitioner-defendants No.8 to 55 qua framing of additional issues has been dismissed.

Mr. Abhilaksh Grover, learned counsel appearing on behalf of the petitioners submitted that respondents No.1 to 22 are the plaintiffs in the suit claiming declaration of having acquired ownership as an occupant tenant on the premise that defendants No.1

to 7 had pre-empted the sale deed of the applicant/petitioners-defendants No.8 to 55 by virtue of decree dated 24.11.1967. In such circumstances, petitioners were constrained to file the counter-claim by challenging the decree, which was at the back of defendants No.8 to 55 as their previous owners were impleaded as parties.

On the basis of pleadings, trial Court framed the following issues:-

- 1. Whether the plaintiffs are entitled to a decree for declaration along with consequential relief of permanent injunction? OPP*
- 2. Whether the plaintiffs are alternatively entitled to a decree for recovery for possession? OPP*
- 3. Whether the plaintiffs are alternatively entitled to a decree for mandatory injunction? OPP*
- 4. Whether the plaintiffs no locus standi and cause of action to file the present suit? OPD*
- 5. Whether the plaintiffs have no right to challenge decree for pre-emption dated 24/11/1967 in civil suit No.35 titled as Moola Vs Lala? OPD*
- 6. Whether the defendants No.8 to 55/counter claimant are entitled to a decree for declaration as they are exclusive owner in possession of land by virtue of sale deed along with consequential relief of permanent injunction? OPD*
- 7. Relief.”*

He submitted that both additional issues are essential and

necessary, as the co-defendants would also require to defend the decree dated 24.11.1967. As regards issue No.2, it is submitted that requirement of law is required to be complied with by the plaintiffs.

Mr. Sanjiv Gupta, learned counsel appearing on behalf of the respondents submitted that both the proposed issues have already been taken care of in the issues already framed by the Court and there is no need for any additional issue to be framed. Even in the absence of any issue, parties can always lead evidence, thus, urges this Court for dismissal of the revision petition.

I have heard learned counsel for the parties and appraised the paper book. It would be apt to reproduce proposed additional issues:-

“1. Whether Shri Moola son of Shri Maman – the ancestor of defendants No.1 to 7 has become owner of the land in question by virtue of decree dated 24.11.1967 passed in Civil Suit No.35 based on tenancy rights, as alleged? OPD

2. Whether the plaintiffs or their ancestors were never been tenant in possession of the land in question at the relevant time, if so to what effect. OPD”

In my view, both the proposed issues are not required to be framed, for, they are already taken care in issue No.2 with onus to prove on respondents-plaintiffs No.1 to 22 and issue No.6 with onus to prove on defendants-counter claimants. Even otherwise, it is settled law that if parties are alive to the situation and in the absence of issues, parties have led evidence, Court can always adjudicate

upon the same. The aforementioned view of mine is derived from ratio decidendi culled out by Hon'ble Supreme Court culled out in **P. Purushottam Reddy Vs. M/s Pratap Steels Ltd. 2002 (2) RCR Civil 70.**

In view of aforementioned situation, I do not find any illegality and infirmity in the order under challenge. No ground for interference is made out. The revision petition is dismissed.

(AMIT RAWAL)
JUDGE

January 30, 2019
Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No