

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

CR-1362-2018 (O&M)

Date of decision : 24.01.2020

The Samgoli Landless Scheduled Cast Co-op Collective Farming Society
Limited

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Suvir Sidhu, Advocate for
Mr. Mandeep Singla, Advocate for the petitioner.

Mr. P.P.S. Doabia, Advocate for respondent Nos.2 and 3.

ANIL KSHETARPAL, J. (ORAL)

Challenge is to the order dated 22.01.2018 passed by the learned Additional Civil Judge (Senior Division), Derabassi, framing issues arising between the parties in the civil suit. It may be noted here that initially the Court had framed following issues:-

“1. Whether the plaintiff is entitled to decree for declaration as prayed for? OPP

2. Whether the plaintiff is entitled to the decree for permanent injunction as prayed for? OPP

3. Whether Biru Ram seller was competent to sell the land vide sale deed wasika no.951 dated 18.9.1980? OPD

*4. Whether Samgoli Landless Schedule Caste-op-
operative collective Farming Society Ltd. is not entitled for*

allotment of land as per the Nazool Lands (Transfer) Rule 1956? OPD

5. *Whether the suit is not maintainable in the present form? OPD*

6. *Whether suit of the plaintiff is time barred? OPD*

7. *Whether the plaintiff society has no locus standi to file the present suit? OPD*

8. *Whether suit is liable to be dismissed as no legal notice U/s 80 CPC has been served upon the answering defendants? OPD*

9. *Whether the suit is bad for non-joinder of necessary parties? OPD*

10. *Relief.”*

The aforesaid issues were not in accordance with the requirements of Order XIV of the Code of Civil Procedure which provide that each material proposition affirmed by one party and denied by the other shall form subject of a distinct issue. The issues are of two kinds, (i) issues of fact, (ii) issues of law. Order XIV Rule 5 of CPC authorizes the Court to amend the issues or frame additional issues at any point of time before passing the judgment. Order XIV Rule 1 of CPC and Order XIV Rule 5 of CPC, are extracted as under:-

***“ORDER XIV-
SETTLEMENT OF ISSUES AND DETERMINATION
OF SUIT ON ISSUES OF LAW OR ON ISSUES
AGREED UPON***

1. Framing of issues— (1) *Issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other.*

(2) *Material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to*

sue or a defendant must allege in order to constitute his defence.

(3) Each material proposition affirmed by one party and denied by the other shall form the subject of a distinct issue.

(4) Issues are of two kinds :

(a) issues of fact,

(b) issues of law.

(5) At the first hearing of the suit the Court shall, after reading the plaint and the written statements, if any, and [after examination under Rule 2 of Order X and after hearing the parties or their pleaders], ascertain upon what material propositions of fact or of law the parties are at variance, and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to depend.

(6) Nothing in this rule requires the Court to frame and record issues where the defendant at the first hearing of the suit makes no defence.

ORDER XIV RULE 5 OF CPC:-

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.”

Keeping in view the mandate of Order XIV of CPC, learned Civil Judge has reframed the issues by impugned order which reads as under:-

- “1. Whether the plaintiff is entitled to decree for declaration to the effect that plaintiff is owner in possession of land mentioned in the head note of the plaint? OPP*
- 2. Whether the entries in the revenue record to contrary are wrong and illegal and liable to be corrected in the name of plaintiff? OPP*
- 3. Whether the plaintiff is entitled for permanent injunction as prayed for? OPP*
- 4. Whether allotment made by defendant No.1 in the name of defendants or their predecessor Biru Ram is wrong and illegal? OPP*
- 5. Whether land in dispute could have been allotted only to the Scheduled Caste Cooperative Societies as found by the resident of village Samgoli? OPP*
- 6. Whether Biru Ram has no concern with the land in dispute? OPP*
- 7. Whether Biru Ram is/was absolute owner of land as per sale deed bearing Vasika No.951 dated 18-09-1980? OPD (defendant No.1)*
- 8. Whether Samgoli Landless Scheduled Caste Cooperative Collective Farming Society Ltd., Samgoli is not entitled for allotment of land as per the Nazool Lands (Transfer) Rules, 1956? OPD (defendant No.1)*
- 9. Whether the plaintiffs has not challenged sale deed vasika No.951 dated 18-09-1980? OPD defendant No.1.*
- 10. Whether the suit is liable to be dismissed as no legal notice under Section 80 of Code of Civil Procedure has been served upon the answering defendant? OPD defendant No.1*
- 11. Whether suit is bad for non-joinder of necessary party? OPD defendants no.2 and 3*
- 12. Whether plaintiff has not come to Court with clean hands? OPD (defendants no.2 and 3)*
- 13. Whether present suit is barred by res judicata? OPD*

(defendants no.2 and 3)

14. Whether the suit is not maintainable in the present form? OPD

15. Whether the suit of the plaintiff is time barred? OPD

16. Whether the plaintiffs society has no locus standi to file the present suit? OPD

17. Relief.”

This Court has heard learned counsel for the parties at length.

Learned counsel for the petitioner contends while referring to assertions made in paras 8 and 9 of the plaint that issues Nos.9 and 10 were not required to be framed. Paras 8 and 9 of the plaint are extracted as under:-

“8. That therefore, the allotment if any so made by defendant No.1 to the remaining defendants or Biru Ram is totally wrong and illegal and the revenue authorities in the name of defendants no.2 and 3 is liable to be corrected in the name of the plaintiff. The sale deed dated 11.9.80 in favour of the defendants is also wrong and illegal and is liable to be set aside. The plaintiff had deposited the sufficient amount with the State of Punjab for the allotment of land including the land in dispute and in case there is any deficiency in the amount of deposit the plaintiff has always remained ready and willing and is still ready and willing to deposit amount regarding the allotment of the land. The plaintiff is also entitled to the ownership of land being occupancy tenants.

9. That defendants taking the benefits of the revenue entries in the revenue record are threatening to alienate and encumber the suit property to some 3rd person and further threatened interfere into the peaceful possession of the suit land. The matter is being an urgent nature. The plaintiff

filed application u/s 80 (2) CPC is being filed for the grant of leave to file the suit without effecting the service of notice to the suit under Section 80 CPC. ”

Hence, he submitted that these issues should be deleted.

On consideration of the matter, this Court is of the view that at this stage, it would not be appropriate for the Court to pass any order on deletion of the issues. The plaintiff-petitioner shall be at liberty to contest this fact at the time of final arguments and the Court while passing the judgment shall independently decide the suit uninfluenced by the impugned order. If ultimately the Court comes to a conclusion that issue Nos.9 and 10 or any other issue was not necessary or redundant, the Court would pass appropriate order.

Learned trial Court is requested to make sincere endeavour for expeditious disposal of the case.

In view of the above, the present revision petition is disposed of.

24.01.2020

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No