

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

RSA-3260-2004 (O&M)

Date of decision : 11.02.2020

Municipal Committee, Rewari and another

...Appellants

Versus

All India Bhargav Sabha and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Umesh Aggarwal, Advocate for the appellants.

Mr. C.B. Goel, Advocate for respondent Nos.1 to 6.

Mr. Sanjay Mittal, Advocate for respondent No.7.

ANIL KSHETARPAL, J. (ORAL)

Municipal Committee (defendant) has filed the present Regular Second Appeal against the judgment passed by the learned First Appellate Court, directing as under:-

“31. Consequently, judgment and decree dated 14.10.2000 of learned lower court are hereby reversed. This appeal is accepted and suit is decreed with costs. A decree for mandatory injunction is hereby passed in favour of plaintiffs and appellant, whereby defendants Committee is directed to remove the obstruction created by them by raising construction of shops on the eastern side of the property of plaintiffs. They are directed to bring the thoroughfare/passage in the east of the property of plaintiffs in its original state by removing the construction raised by

them, so as to make the said passage accessible to plaintiffs and proforma defendants i.e. appellant and proforma respondents in this case. Appeal is accordingly accepted with costs. Decree-sheet be prepared accordingly. File be consigned.”

Learned counsel appearing on behalf of the appellants has submitted that the suit filed by the plaintiffs was bad for non-joinder of necessary parties as the Municipal Committee, Rewari had constructed 20 shops on the land in dispute and had allotted the same by public auction on 04.12.1993 i.e., before filing of the present suit. The suit was filed on 07.12.1993. The Courts neither framed the issue on the question of non-joinder of necessary parties nor examined this aspect of the case.

This Court has been repeatedly cautioning the Civil Courts to frame proper issues in accordance with Order XIV Rule 1 of the Code of Civil Procedure, which is 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.”

It is apparent that Order XIV Rule 1 of the Code of Civil Procedure provide that a distinct issue is required to be framed by the Court with respect to each material propositions affirmed by one party and denied by the other party. The issues are of two kinds, (a) issues of fact, (b) issues of law. In the present case, the Court framed issues only on the basis of prayer made in the plaint. The issues framed by the trial Court are as under:-

“1. Whether the plaintiffs are entitled to the relief of permanent injunction as prayed for? OPP.

2. Whether plaintiff is estopped by his act and conduct from filing the present suit? OPD.

3. Relief.”

It is on account of non-framing of important issue that the Courts below have not adverted to the aspect of non-impleadment of necessary parties namely 20 allottees of the shops. Still further, this Court with the help of learned counsel for the parties failed to find out as to how the First Appellate Court has arrived at a finding that the Municipal

Committee has encroached upon some part of the public passage. The width of the public passage has not been determined by the First Appellate Court.

Although, non-impleadment of the necessary parties is a fundamental defect which goes to the root of the case, however, keeping in view the fact that the present suit was filed for the facility of the general public, therefore, the case is remitted back to the learned trial Court to frame proper issues. The plaintiffs would also be granted opportunity to amend the pleadings, if so advised. The Court would re-decide the suit afresh.

Parties through their counsel are directed to appear before the trial Court on 02.03.2020.

In view of the above, the present Regular Second Appeal is disposed of.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

11.02.2020

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No