

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

CR-1620 of 2021 (O&M)

Date of decision: 18.08.2021

Naresh Kumar @ Mahesh Kumar and others

...Petitioners

Versus

Sadhu Singh and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. Kashish Garg, Advocate for the petitioners.

H.S. MADAAN, J. (Oral)

Case taken up through video conferencing.

The grouse of the petitioners, who are defendants/counter claimants in the civil suit titled 'Sadhu Singh and others Vs. Shivnandan Lal and others' is with regard to framing of issues by the trial Court.

Notice of motion.

Mr. Suresh Singla, Advocate has appeared on behalf of respondents No.1 to 9, who are plaintiffs in the original suit.

Both the counsel agree that some issues have not been properly framed and onus qua some of them has not been properly fixed. Issue No.2 framed by the trial Court is that whether plaintiffs have no locus standi or cause of action to file the present suit. Such type of issue was not required to be framed because unless the plaintiffs have got locus standi, they cannot approach the Court by way of filing a civil suit and similarly, if no cause of action arose to them, then they will not get any relief. The trial Court may delete issue No.2 being unnecessary.

With regard to issue No.3, whether the suit is bad for non-joinder of necessary parties, since in the written statement and counter claim/defendants have not given the names of other persons, who ought to have been joined and furthermore on an application under Order 1 Rule 10 CPC having been filed, Kewal Krishan and Amra Devi have been impleaded as defendants No.6 and 7, in that way, this issue also seems to have redundant and the trial Court may examine the desirability of deleting the same.

With regard to issue No.4, whether the suit is barred U/o 2 Rule 2 CPC, this is a simple suit for grant of permanent injunction and it is doubtful as to whether the suit will attract applicability of Order 2 Rule 2 CPC. The trial Court may examine the desirability of retaining this issue or deleting it.

With regard to issue No.5, whether the suit is not maintainable in the present form, the suit as framed appears to be maintainable under Specific Relief Act and this also appears to be a vague objection. Learned counsel for the revisionists states that this issue may be deleted. The trial Court may act accordingly.

With regard to issue No.6, whether the plaintiffs have not complied with the provisions of Order 7 Rule 11 CPC, the trial Court may examine the necessity of framing of such issue keeping in view the objection so taken by the defendants in the written statement-cum-counter claim, rather than framing issues in a mechanical manner.

With regard to issues No.7 to 10, those appear to have been properly framed.

With regard to issues No.11 and 12, the objection of the revisionists is with regard to onus of proof being placed upon defendants/counter claimants instead of plaintiffs, who had raised such objection. Counsel for respondents No.1 to 9 states that he has no objection if onus of proving these issues is placed upon the plaintiffs. The trial Court may act accordingly.

With such observations, the present revision petition stands disposed of. The trial Court may take appropriate action in the matter in the light of what has been stated earlier in this order.

18.08.2021
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(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No