

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CR-6518 of 2019

Date of Order: 04.05.2022

Sh. Rajeshwar Sharma

..Petitioner

Versus

Smt. Rashmi Kashyap @ Brij Bala and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. G.S.Madaan, Advocate  
for the petitioner.

Mr. M.L.Saggar, Sr. Advocate, with  
Mr. Sunny Saggar, Advocate,  
Ms. Armaan Saggar, Advocate  
for the respondents.

**ANIL KSHETARPAL, J(Oral)**

Defendant no.1, in a suit for grant of decree of mandatory injunction, permanent injunction and recovery, assails the correctness of interlocutory order passed on 07.09.2019.

It is the case of the petitioner that the trial Court did not follow the mandate of Order 14 Rule 1 CPC while framing issues. The trial Court has dismissed the application on the ground that the issues already framed are comprehensive and cover all aspects, therefore, no separate issues are required to be framed.

This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book.

As per Code of Civil Procedure, 1908, Order 14 Rule 1 provides for framing of the issues, which is extracted as under:-

***“Rule 1 Order XIV of Code of Civil Procedure 1908***

***"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 evident that each material proposition affirmed by one party and denied by other shall form the subject matter of a distinct issue.

Sub-rule (4) of "Order 14 Rule 1 CPC further provides that issues are of two kinds, issues of fact and issues of law.

Lamentably, it has been noticed that the Courts have started framing issues on the basis of relief claimed and on the basis of objections taken in the written statement. This can be demonstrated in the present case by extracting the issues which have been framed by the Court:-

- "i) Whether the plaintiff is entitled for mandatory injunction as prayed for?OPP*
- ii) Whether the plaintiff is entitled for permanent injunction*

*as prayed for?OPP*

- iii) *Whether the suit of the plaintiff is barred under Order 2 Rule 2 CPC?OPD*
- iv) *Whether the suit of the plaintiff is false, vexatious and frivolous to the knowledge of the plaintiff?OPD*
- v) *Whether the plaintiff has not come to the Court with clean hands and has suppressed the true and material facts?OPD*
- vi) *Whether the plaintiff has got no right and no cause of action to file the present suit?OPD*
- vii) *Whether the site plan attached with the plaint is totally wrong as per actual and factual position of the spot?OPD*
- viii) *Relief.”*

Despite requesting to the trial Court to frame proper issues, the Court has chose to continue with its error. The defendants, while filing the application, requested the Court to frame the following issues:-

- “(i) *Whether Sh. Onkar Nath executed the Transfer Deed in his sound disposing mind in the year 2007 in favour of the plaintiff, if so its effect?OPP*
- (ii) *Whether there was family settlement amongst Sh. Onkar Nath, father of plaintiff and defendant no.1 and whether in the said family settlement arrived at on 01.10.2003, terrace of property No.07, PNT Colony, Adarsh Nagar, Jalandhar fell to the share of defendant No.1?OPD*
- (iii) *Whether defendant no.1 raised the cosntruction over terrace of property No.07, PNT Colony, Adarsh Nagar, Jalandhar in the month of November 2003, if so its effect?OPD.*
- (iv) *Whether Sh. Onkar Nath Shastri executed WILL on 02.07.2007 in favour of the plaintiff in repsect of property no.07, PNT Colony, Adarsh Nagar, Jalandhar, if so its effect?OPP.”*

The learned counsel representing the respondents contends that the suit is at an advance stage and both the parties have concluded their evidence.

On a careful reading of the proposed issues, it is evident that the

trial Court has failed to frame issues in accordance with the mandate of Order 14 Rule 1 CPC. In fact, issues no.1 and 2 have been framed on the basis of relief claimed in the suit, whereas, the remaining issues are based upon the objections taken in the written statement. In fact, the Court has failed to frame the issue on material proposition of fact or law, affirmed by one party and denied by other. Framing of issues is an important step for proceeding in the right direction. While framing the issues, the Court informs the parties about the scope of the suit and the evidence to be led in support thereof.

Keeping in view the aforesaid facts, the order under challenge is set aside. The application filed by the petitioner is allowed. The additional issues proposed vide application dated 05.09.2019, are hereby framed.

Since the parties have already led their evidence, therefore, both the parties shall be granted two opportunities each to produce their further evidence, if any, required.

The suit shall be decided within a period of 6 months, from today.

All the pending miscellaneous applications, if any, are also disposed of.

**May 04, 2022**

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**(ANIL KSHETARPAL)  
JUDGE**

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|----------------------------------|----------|---------------|
| <b>Whether speaking/reasoned</b> | <b>:</b> | <b>Yes/No</b> |
| <b>Whether reportable</b>        | <b>:</b> | <b>Yes/No</b> |