

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

CR-7179-2019 (O&M)

Date of decision: 16.05.2022

Balbir and another

...Petitioners

Versus

Nand Kishore and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Anurag Jain, Advocate for the petitioners
 Mr. Raman Chawla, Advocate for the respondents

ANIL KSHETARPAL, J (Oral)

The defendants, in a suit for grant of decree of possession, assails the correctness of the order passed by the trial court while framing the following additional issue:-

“Whether the defendants are entitled to retain the possession of the house of the plaintiff till payment of Rs.6,50,000/ along with interest as alleged?OPD”

It is not in dispute that the defendants have pleaded in their written statement that they are entitled to retain the possession of the house belonging to the plaintiff till the payment of Rs.6,50,000/-.

Learned counsel representing the petitioners submits that the plaintiffs are bound to fail or succeed on the basis of the evidence produced by them. He submits that the trial court has erred in placing onus of proving the additional issue on the defendants.

The trial court originally framed the following issues:-

“1.Whether the plaintiff is entitled for decree of possession as prayed for in view of the grounds mentioned in the plaint ? OPP

2. Whether the suit is not maintainable to file the present suit ? OPD

3. Whether the plaintiff has no locus standi to file this suit against the answering defendants ? OPD

4. Whether the plaintiff has no cause of action to file the present suit ? OPD

5. Whether the Hon'ble Court does not have the jurisdiction to entertain adjudicated upon the suit ? OPD

6. Whether the plaintiff is bad for non - joinder and mis joinder of necessary parties ?

7. Relief"

On an application filed by the plaintiffs, the court framed the additional issue, as noticed above. As per Order 14 Rule 1 of the Code of Civil Procedure, 1908, the court is required to frame distinct issue on every material fact, affirmed by one party and denied by another party. It is the case of the defendants that they are entitled to retain possession till the plaintiff pays Rs.6,50,000/-. Obviously, the onus to prove that fact is on the defendants. Hence, no ground to interfere is made out.

Dismissed.

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

16.05.2022

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE