

(2010) 09 P&H CK 0331

High Court Of Punjab And Haryana At Chandigarh

Case No: C.R. No. 5669 of 2010

Nirmal Singh

APPELLANT

Vs

Harbans Singh

RESPONDENT

Date of Decision: Sept. 10, 2010**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 6 Rule 17

Hon'ble Judges: Alok Singh, J**Bench:** Single Bench**Final Decision:** Dismissed

Judgement

Alok Singh, J.

Defendant - petitioner is assailing the order dated 9.8.2010 passed by the Additional Civil Judge, Senior Division, Sangrur, thereby rejecting the defendant's amendment application moved Order 6 Rule 17 CPC.

2. Brief facts of the present case, inter-alia, are that the plaintiff has filed suit for possession by redemption against the defendant specifically pleading that plaintiff has mortgaged the shop in favour of the defendant vide mortgage deed dated 3.8.1994 for mortgage money of Rs. 10,000/-. Defendant - petitioner herein filed written statement stating therein that he has taken the shop in dispute on rent from the plaintiff and has paid Rs. 10,000/- as security to the plaintiff and in lieu of the security, alleged mortgage deed was executed. Thereafter, trial commenced and plaintiff's evidence was recorded. When the case was listed for defendant's evidence, present amendment application was moved by the defendant seeking permission from the Court to add in paragraph 2 of the written statement pleading to the effect that earlier also, defendant was the tenant of the father of the plaintiff and he wanted bigger shop, hence he took the present shop from the plaintiff as a tenant on rent.

3. The trial Court has observed that the fact that plaintiff was tenant of the father of the plaintiff of another shop, is not relevant for the purpose of deciding the lis between the parties. Shop under tenancy of the defendant from the father of the plaintiff is not in dispute. The trial Court has further observed that the defendant was well aware that he was tenant of the plaintiff's father of another shop and that defendant could not prove that despite of due diligence, he could not take this plea which was well within his knowledge at the time of filing of the written statement.

4. In the present case, the only dispute is as to whether the defendant is mortgagee or tenant of the property in dispute as alleged by the defendant.

5. I find no perversity or illegality in the finding recorded by the trial Court. Amendment was rightly refused.

6. Learned Counsel for the petitioner further argued that while rejecting the amendment application, the trial Court has also framed the issues, which were not earlier framed.

7. It is settled position of law that if the parties are aware about the dispute/lis between the parties, non-framing of issues by the Court is always not fatal, if the parties knowing well about the dispute between them, have led evidence on the lis pending between the parties. However, there seems to be procedural lapse by not framing issue before the plaintiff's evidence on the part of the trial Court. The trial Court has rightly framed issues which should have been framed before the plaintiff's evidence.

8. I find support from the Judgment of the Apex Court in the matter of [Nedunuri Kameswaramma Vs. Sampati Subba Rao](#), wherein it was held as under:

Where the parties fully knowing the rival case and led all the evidence not only in support of their contentions but in refutation of those of the other side, it cannot be said that the absence of an issue was fatal to the case, or that there was that mis-trial which vitiates proceedings. The suit could not be dismissed on this narrow ground, and also there is no need for a remit, as the evidence which has been led in the case is sufficient to reach the right conclusion and neither party claimed that it had any further evidence to offer.

9. In the present case, only plaintiff has led his evidence after understanding the main dispute arising between the parties and defendant has yet to produce evidence, hence the defendant cannot be said to be aggrieved by framing of the issues by the trial Court.

10. Petition is devoid of merit and hence, is dismissed.