

In the High Court of Punjab and Haryana at Chandigarh

**Civil Revision No. 4649 of 2015
Date of Decision: 27.07.2015.**

Asha Rani and others

.....Petitioners

Versus

Tripta Saggar and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Vishal Aggarwal, Advocate
for the petitioners.

SABINA, J.

Petitioners have filed this petition under Article 227 of Constitution of India challenging the order dated 25.3.2015 (Annexure P-6) whereby application moved by the petitioners for framing of additional issue qua limitation, was dismissed.

Learned counsel for the petitioners has submitted that petitioners had taken up a specific objection in the written statement that the suit filed by the plaintiffs was not within limitation. However, no issue in this regard had been framed by the Trial Court.

Respondents No. 1 to 4 have filed suit for declaration that they were co-owners qua the suit property to the extent of 1/5th share jointly and also sought a decree for permanent injunction restraining the defendants from dispossessing respondent No. 1 from the suit property.

During the pendency of the suit, petitioners moved an application that issue regarding limitation be framed. The Trial Court while dismissing the said application has held as under:-

“After hearing both the counsel and going through record, I am of considered view that issue of limitation is very much covered under issue of “maintainability” of instant suit, which has already been framed and both the parties have already lead their evidence in support of their case and issue of limitation was not out of its reach, as such, at this stage, when the case is at the stage of final arguments, there is no need of framing of additional issue with regard to limitation period and it is made clear that arguments will be heard on this point and controversy will be decided on merits. As, both the parties were well aware about their respective pleas taken, at this stage, they cannot be allowed to take advantage of mere formal technicality. Application is accordingly dismissed. Now to come up on 8.4.2015 for rebuttal evidence if any or final arguments.”

Learned Trial Court while dismissing the application has held that the issue with regard to limitation was covered under the issue of maintainability and the parties had already led their evidence in support of their respective pleas. Moreover, it is a settled proposition of law that mere non-framing of an issue is not fatal as the parties know their case and lead evidence in support of their respective pleas. During the course of arguments, it has transpired that the petitioners have already led evidence with regard to their objection taken in the written statement that the

suit was not within limitation. It has been ordered by the Trial Court that the issue qua limitation would be considered under the issue of maintainability. Hence, petitioners will not suffer any injustice warranting interference by this Court while exercising revisional jurisdiction.

No ground for interference by this Court is made out.

Petition stands disposed of accordingly.

**(SABINA)
JUDGE**

July 27, 2015
Gurpreet