

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

CR No. 5966 of 2015

Date of decision :26.04.2016

Smt. Krishna Kanwar and others

..... Petitioners

Versus

**Satya Pal Singh Chauhan (since deceased) through his LRs
and others**

.....Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.Harkesh Manuja, Advocate
for the petitioners.

Mr. K.P.Singh, Advocate
for the respondent no.1-A.

Mr. Deepak Sharma, Advocate
for respondents no.2 to 4.

- 1. Whether Reporters of Local papers may be allowed to see the judgment?Yes.**
- 2. To be referred to the Reporters or not?Yes.**
- 3. Whether the judgment should be reported in the Digest?Yes.**

DARSHAN SINGH, J. (Oral)

The present revision petition has been preferred against the order dated 31.08.2015 passed by the learned Additional Civil Judge (Senior Division), Naraingarh, whereby the application moved by the petitioner-plaintiffs for framing additional issue with respect to the Will has been dismissed.

2. Learned counsel for the petitioners contended that

the respondent-defendants have propounded the Will dated 03.11.1979 allegedly executed by deceased Agar Singh in their favour. But, the learned trial Court has not framed any issue with respect to the valid execution of the Will. He contended that the learned trial Court should have framed the specific issue with respect to the validity of the Will as per the pleadings.

3. On the other hand, learned counsel for the respondents contended that the application has been moved when the case was fixed at the stage of arguments. The plaintiffs were aware of the pleadings with respect to the Will. In fact, they have challenged the Will. The parties have also led their respective evidence. Thus, they contended that the controversy between the parties can be effectively decided under the already framed issues. To support their contentions, they relied upon cases **Dera Baba Budh Ram and others Vs. Mahabir Singh 2014(1) PLJ 239, Smt. Kamla and another Vs. Bhoop Singh and another 2010(5) R.C.R (Civil) 674, Surinder Singh VS. Kuldeep Singh and others 2015(8) R.C.R (Civil) 107 and Tika and others Vs. Ram Chander and others 2003(3) R.C.R (Civil) 541**. They further contended that as the plaintiffs-petitioners have not claimed for framing of this issue at the relevant time, it will be deemed they have waved their right for framing this issue. They further contended that various applications moved by

the petitioners were dismissed by the Court. The present application has also been moved only to prolong the proceedings of the case, which has already become old and is pending for the last about five years.

4. I have duly considered the aforesaid contentions.

5. In the application moved by plaintiff-petitioners for framing the additional issue, it has been proposed that the following additional issue should be framed:-

“5-A. Whether the Will dated 03.11.1979 was validly executed by Agar Singh, now deceased, in favour of the defendants?OPD.

6. This fact is not disputed that the plaintiffs have challenged the Will dated 03.11.1979 and the defendant-respondents are pleading that the said Will was validly executed by deceased Agar Singh in their favour. So, there is a specific plea regarding the valid execution of the Will raised by the defendant-respondents. They are defending the suit filed by the plaintiffs by propounded the Will dated 03.11.1979 allegedly executed by Agar Singh. When, there were specific pleadings with respect to the Will, it was obligatory on the part of the Court to frame a specific issue with respect to the valid execution of the Will in order to properly adjudicate upon the matter in issue. To support this view reference can be made to cases **Sher Singh Vs. General Public 2001(3) R.C.R (Civil) 780** and **P.B. Kasee Sah Vs. P.T. Hiru Sah 2012(2) MLJ 73**.

7. As it is the duty of the Court to frame the

proper/specific issues on all the points raised in the pleadings. Even if a party could not press for an issue at the initial stage that party is not debarred from claiming of framing an additional issue at the later stage. Reference can be made to case **Rajinder Tandon Vs. Thomas Nasir Masih 1999(1) R.C.R (Civil) 539.**

8. Thus, mere this fact that the application for additional issue has been moved at the belated stage is no ground to decline the request when this fact is not disputed that his issue arises from the pleadings of the parties.

9. No doubt, previous applications moved by the plaintiffs for additional evidence and permission to lead evidence in rebuttal has been dismissed. Those orders were also unsuccessfully challenged before this Court. The Civil Revision No. 3294 of 2013 was dismissed as withdrawn by this Court vide order dated 20.08.2014 granting liberty to the petitioners to file the fresh application with better particulars before the Court below. The Civil Revision No. 5079 of 2015 was filed against the order declining the permission to the plaintiffs-petitioners to lead evidence in rebuttal. This Court has observed that as there was no issue regarding Will. In view of those observations, the said revision petition was also withdrawn with liberty to move appropriate application before the lower Court for framing of additional issue. After that, this application has been moved. So, the previous applications will

not bar the present application for framing the additional issue. Cases **Dera Baba Budh Ram and others (Supra)**, **Smt. Kamla and another (Supra)**, **Surinder Singh (Supra)**, **Tika and others (Supra)** relied upon by learned counsel for the respondents have been rendered by this Court on the peculiar facts and circumstances of those cases. Case **Nedunuri Kameswaramma Vs. Sampati Subba Rao AIR 1963 Supreme Court 884**, is quite distinguishable of facts as the question for consideration in that case was as to whether the omission to frame the issue will vitiate the proceedings and can be made ground for the dismissal of the suit, which is not the point in dispute in this case.

10. Thus, keeping in view of my aforesaid discussion, the present revision petition is hereby allowed. The application moved by the petitioners-plaintiffs for framing the additional issue is hereby allowed. The learned trial Court is directed to frame the additional issue proposed by the plaintiffs-petitioners in para no.7 of the application dated 18.08.2015.

11. It is made clear that as the suit has already become old, the parties shall not be entitled to unnecessarily delay the disposal of the suit and will not avail unnecessary adjournments for leading evidence on the additional issue. They will produce the evidence on additional issue without any loss of time. The learned trial Court will be at liberty to limit the rights of the parties to lead the evidence on the

additional issue in the interest of early disposal of the suit.

The learned trial Court shall make every endeavour to dispose of the suit expeditiously preferably within six months from the next date of hearing fixed before the learned trial Court.

26.04.2016

S.khan

(DARSHAN SINGH)
JUDGE