

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

CR No. 1831 of 2017

Date of Decision: 14.07.2017

JAI CHAND AND ORS

-PETITIONERS

VS

SULOCHNA DEVI AND ORS

-RESPONDENTS

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Ashwani Nagra, Advocate,
for the petitioners.

RAJ MOHAN SINGH, J. (ORAL)

Petitioner has assailed order dated 11.11.2016 passed by Additional District Judge, Yamuna Nagar declining to frame additional issue under Order 14 Rule 5 CPC.

Plaintiffs filed a suit for declaration to the effect that the plaintiffs along with defendants No.2 and 3 are entitled to claim share in the share left by their brother Singh Ram who was not heard for more than 7 years since 1983 and is presumed to be civilly dead. Mutation No.427 sanctioned in favour of defendant No.1 is claimed to be illegal. Singh Ram was owner of 4 Kanals 16 Marlas of land. His marriage was fixed with one Lal Chandi during lifetime of his father Kishna Ram but before his marriage, Kishna Ram died and marriage

was solemnized thereafter. The marriage could not be consummated. Singh Ram left the house in 1983 and since then, his whereabouts are not known to the plaintiffs. Plaintiffs presumed him to be civilly dead and filed suit in the aforesaid premise.

Defendants No.2 and 3 being sisters of the plaintiffs transferred their share in favour of the plaintiffs. Mutation No.427 was sanctioned in favour of defendant No.1 who claimed herself to be daughter of Singh Ram from the marriage between Singh Ram and Lal Chandi. Plaintiffs also alleged that defendant No.1 was infact daughter of one Lal Dass with whom Lal Chandi contracted second marriage by converting her name as Sudesh Devi. Plaintiffs further asserted that school record of defendant No.1 shows her father name to be Lal Dass. In the ration card and voter list, Lal Chandi is recorded as Sudesh Devi. Marriage of defendant No.1 was solemnized with Kamal Kishan on 19.02.2006 and in the marriage card, fathers name of defendant No.1 was shown to be Lal Dass though in para No.1 of the plaint, Anti Devi was shown alive at the time of disappearance of Singh Ram upto 14.07.2005.

Trial Court dismissed the suit. During pendency of first appeal before the lower Appellate Court, an application

under Order 14 Rule 5 CPC was filed on the premise that Anti Devi would have inherited $\frac{1}{2}$ share of Singh Ram, so necessary issues should have been framed by the trial Court. Lower Appellate Court dismissed the application and that is, how, present revision petition came to be filed in this Court.

I have heard learned counsel for the petitioners.

Apparently, the application under Order 14 Rule 5 CPC came to be filed at the fag end of the appeal when the same was listed for final hearing. During pendency of the suit, no such claim was claimed by the petitioners. No matter if both the parties are alive to the case of each other, issues become totally inconsequential. The foundation is to be set up by the plaintiff-petitioners in the pleadings. The pleadings of the plaintiffs are in the context of claiming $\frac{1}{6}^{\text{th}}$ share out of the estate of Singh Ram. In the event of leading evidence to the contrary i.e. qua entitlement of Anti Devi to the extent out of the property left by Sudesh Devi, entitlement of the property was to be changed from $\frac{1}{6}^{\text{th}}$ to $\frac{1}{12}^{\text{th}}$ share. The pleadings are not available on record nor any effort was made by the plaintiffs to amend the same at any point of time during course of trial. No amount of evidence can be led without there being any pleadings on record.

In view of above, I do not find any ground to interfere in the impugned order passed by the lower Appellate Court declining to frame additional issue at the instance of the petitioners.

Accordingly, the present revision petition is dismissed.

14.07.2017

jjyoti Y.

**(RAJ MOHAN SINGH)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No