

Civil Revision No.804 of 2017 (O&M)

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

Sr. No.126

**Civil Revision No.804 of 2017 (O&M)
DECIDED ON: February 20, 2017**

YOGESH KUMAR

..PETITIONER

VERSUS

RAJINDER KUMAR AND SONS & ORS.

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Mandeep Singh Sachdeva, Advocate,
for the petitioner.

JASPAL SINGH, J.

CM No.2453-CII of 2017

Application is allowed as prayed for.

CR No.804 of 2017

Challenge in this revision petition is to the order dated January 09, 2017 (Annexure P-1) passed by the learned Civil Judge (Jr. Divn.) Jalandhar, whereby an application for re-framing of issues preferred by the petitioner/plaintiff has been dismissed.

Civil Revision No.804 of 2017 (O&M)

2. Admittedly, petitioner filed a suit against the respondents for declaration to the effect that he as well as respondents No.2 to 4 constitute Hindu United Family under the name and style M/s Rajinder Kumar & Sons HUF i.e. respondent No.1 and Suresh Kumar i.e. respondent No.2 is its KARTA AND Further for declaration to the effect that sale deeds dated May 02, 2002, August 05, 2002, June 28, 2002, July 07, 2002 and July 30, 2002 fully detailed and described in the head note of the plaint are null & void and have no effect on his legal rights and other members of HUF as well as for permanent injunction restraining the respondents-defendants No.7 to 14 from further alienating the properties in question in any manner and not to raise any construction or change the nature thereof.

3. At the very outset of the arguments, it would be appropriate to mention that the petitioner-plaintiff earlier moved an application before the trial court for re-framing of issues but that was dismissed. Being aggrieved against the dismissal of the said application, he preferred revision petition before this court which was disposed of vide order dated September 06, 2012, whereby the liberty was granted to the petitioner/plaintiff to file a fresh application before the trial court. In pursuance of the said order, a fresh application was moved, which has been dismissed by the learned trial court vide impugned order dated January 09, 2017.

4. The main grouse ventilated by the petitioner-plaintiff through the instant petition is that specific issues have not been framed to the effect that the petitioner-plaintiff and respondents-defendants No.2 to 4 constitute Joint Hindu Family and the property in question is ancestral joint Hindu family coparcenary property and whether KARTA Suresh Kumar had any

Civil Revision No.804 of 2017 (O&M)

legal necessity to alienate the suit property. Since in the absence of such a specific issues, the matter in controversy involved in the suit cannot be properly adjudicated upon the petitioner-plaintiff through an application moved by him, which has been dismissed vide impugned order dated January 09, 2017 has sought the framing of following issues:-

- i. Whether the property in dispute is ancestral Joint Hindu Family property? OPP.
- ii. Whether the sale deeds executed and challenged in the present case dated 02.05.2002, 05.08.2002, 26.08.2002, 02.07.2002 and 30.07.2002 are illegal, null and void and not binding upon the rights of the plaintiff, being without legal necessity? OPP
- iii. Whether the KARTA Suresh Kumar had any legal necessity to alienate the property? OPR.

5. A close scrutiny of the file transpires that issues in the case were culled out on January 18, 2010. Thereafter, the case was adjourned time and again for the evidence of the plaintiff. The parties have already led their respective evidence as per their pleadings. It cannot be said that either the petitioner-plaintiff or the respondents-defendants were not aware of their pleadings at the time of adducing their respective evidence. Moreover, a specific issue No.1 has been framed to the effect that “whether the plaintiff is entitled to the declaration as prayed for? OPP” which covers all the three issues which are sought to be framed by the petitioner-plaintiff. The suit is at also its penultimate stage. The parties have led their evidence fully knowing their case. It is well settled proposition of law that when the parties have led their evidence being aware of their pleadings, it is not necessary to frame the specific issues. In the case in hand, the suit was instituted in the year 2006 and is lingering more than a decade. The

Civil Revision No.804 of 2017 (O&M)

framing or re-framing the issues would be nothing but would re-open the case. It appears that the instant application has been moved by the petitioner-plaintiff just to delay the disposal of the suit. The impugned order is absolutely inconsonance with the legal proposition and does not call for interference by this court.

6. Accordingly, instant petition stands dismissed.

February 20, 2017
Ankur

(JASPAL SINGH)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No