

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

Civil Revision No.2147 of 2017

Date of Decision: 13.07.2018

Kuldeep Singh Randhawa

...Petitioner

Vs.

Resham Singh Randhawa and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Kanwaljit Singh, Sr. Advocate,
with Mr. Abhishek Bajaj, Advocate,
for the petitioner.

Mr. A. R. Kaushal, Advocate, for
Mr. R. K. S. Brar, Advocate,
for the respondents.

Amol Rattan Singh, J.

By this revision petition, invoking jurisdiction under Article 227 of the Constitution, the petitioner challenges the order of the learned Civil Judge (Senior Division) (NRI Cases), Jalandhar, dated 01.02.2017, by which the application filed by the petitioner and his co-defendants in the civil suit instituted against him by respondent no.1 herein (plaintiff in the civil suit), has been dismissed.

Vide the said application, the petitioner had sought framing of an additional issue on the question of limitation.

2. Briefly, the suit of the plaintiff seeks a declaration to the effect that he is the owner in joint possession of the suit property and that the adoption deed dated 07.07.1959, contended by the defendants to have been executed by one Malook Singh, by which he is stated to have adopted Massa

Singh, uncle (fathers' brother) of the petitioner-plaintiff, was void *ab initio* and that the mutation sanctioned qua the suit land in favour of Malook Singh was also therefore void *ab initio* and not binding on the rights of the plaintiff.

3. As per the impugned order, in the written statements filed by the defendants, they had taken a preliminary objection that the suit was barred by limitation. However, no issue was actually framed on that question and hence, the petitioner by the application which has been dismissed, sought the framing of the following issue:-

“Whether the suit is within limitation? OPP”

4. The application is stated to have been filed at a stage when evidence of the parties had already been closed, with, as per the learned Civil Judge, no additional evidence required to be read even if the issue was framed and in any case, it was the “bounden duty of the Court to see if the claim is within limitation”.

5. In the reply filed by the defendants to the said application, they opposed it on the ground that no issue was required to be framed and that the application had simply been “drafted cleverly” as in any case it is well settled law that the burden to prove the fact that the suit is beyond limitation, is upon the defendants.

6. While dismissing the application, the learned Civil Judge also observed that other than the declaration sought in the suit, injunction against alienation of the suit property was also prayed for and that the issues were framed on February 25, 2016, with the evidence of the plaintiff closed on September 06, 2016 and that of the defendants on December 21, 2016. Thus, the application was actually filed when the case was fixed for rebuttal evidence and arguments of the parties.

7. Noticing as above, also reiterating that though a plea of limitation had been raised by the defendants, no specific issue on that question was framed and further, that under Section 3 of the Limitation Act, 1963, the Court is required to adjudicate upon the issue even if it was not specifically framed, the Civil Judge went on to refer to a judgment of this Court in **Balraj Singh (dead) through LRs v. Bhupinder Singh** 2016 (5) **RCR (Civil) 19**, in support of the conclusion that no issue on limitation needs to be framed but with the question still to be decided by the Court.

8. Before this Court, Mr. Kanwaljit Singh, learned senior counsel appearing for the petitioner, submitted that even though the application for framing of an issue on the question of limitation was filed after evidence had been led on both sides, it being a basic issue, it can still be framed in terms of Order 14 Rule 5 of the CPC, especially when the petitioner will not be leading any evidence on the issue but simply wishes that the trial Court consciously records a finding qua it.

Learned counsel for the respondents on the other hand submitted that once the Court is seized of the fact that the issue of limitation, whether formally framed or not, is to be decided, as is recorded in the impugned order, there is no need for formal framing of the issue.

He further relied upon a judgment of the Supreme Court in **Swamy Atmananda and others vs. Sri Ramakrishna Tapovanam and others** 2005 (3) **RCR (Civil) 404**, from which he pointed to paragraph 39, which reads as follows:

“39. If the parties went to the trial knowing fully well the real issues involved and adduced evidence in such a case without establishing prejudice, it would not be open to a party to raise the question of non-framing of (a) particular issue.”

He also referred to the judgment cited by the trial Court in the impugned order, i.e. *Balraj Singh (dead) through LRs vs. Bhupinder Singh* (supra).

In rebuttal, learned senior counsel submitted that framing of the issue becomes necessary because if without framing the issue the trial Court decides upon the question of limitation, in appeal the respondents/defendants can take a plea that they were not able to lead any evidence in respect of the said question, as no formal issue had been framed on it.

9. Having considered the arguments of both learned counsel, as also the order of learned Civil Judge, though otherwise there is no error in the order, to the extent that even with no issue framed on the question of limitation, that Court is bound to consider the question especially as it has been raised in any case; however, I am in agreement with learned senior counsel appearing for the petitioner, that if the issue of limitation is eventually decided in favour of the petitioner-plaintiff, the possibility of the respondents-defendants, raising the issue of not being able to lead any evidence with regard thereto, obviously cannot be ruled out, if either of the parties goes in appeal against the judgment that eventually would come from the Court of the learned Civil Judge.

There is also, naturally, no quarrel with the judgment cited by learned counsel for the respondents, which is also what has been observed hereinabove, (as this Court is bound to observe); yet, in my opinion, framing of a 'formal issue', simply in order to try and avoid the matter being prolonged at the appellate or any subsequent stage, upon the parties raising this question again that with no formal issue having been framed with regard to limitation,

the defendants were not able to lead any evidence, I seen no harm in allowing this petition and directed the Civil Judge to 'formally frame' the issue on the question of limitation; but with a rider that the plaintiff shall be bound by the undertaking voluntarily given, to the effect that he shall not lead any further evidence whatsoever except in rebuttal (if that is otherwise allowed by the Civil Judge), as regards the evidence led by the defendants.

Naturally, however, if the respondents-defendants wish to lead any evidence on the question of limitation, the issue having been directed by this Court to be framed at the instance of petitioner-plaintiff, the defendants would be within their right to do so, on that issue.

10. The petition is allowed as above.

July 13, 2018
dinesh

(AMOL RATTAN SINGH)
JUDGE

1. Whether speaking/reasoned?	Yes
2. Whether reportable?	Yes