

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

CR no.345 of 2017

Date of Decision: 29.04.2019

Dharambir Singh

...Petitioner

Vs.

Balbir Singh through LRs and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Aditya Jain, Advocate, for the petitioner.
Mr. Sanjay Vij, Advocate, for respondents no.1 to 3 and 5.

Amol Rattan Singh, J (Oral)

By this petition, the petitioner challenges the order passed by the learned trial court (Civil Judge, Sr. Divn., Gurgaon), dated 16.12.2016, by which, though issues had been re-framed in the suit pending, the issue on the suit being barred by limitation or not has specifically not been framed.

He first points to the order passed by this Court in CR no.5473 of 2012, decided on May 02, 2013 (copy Annexure P-4), by which while accepting the revision petition filed by the plaintiffs seeking an amendment in the plaint, this Court had observed that it would be open to the present petitioner (defendant, Dharambir Singh) to take the plea of limitation *qua* challenge to the sale deed, at the appropriate stage.

He next points to the order passed by the trial court on March 12, 2014 (copy Annexure P-5), by which the application filed by the present petitioner under Order 7 Rule 11 of the CPC has been dismissed, but even

while doing so, the following additional issue was framed by that Court:-

“Issue no.10A: Whether the suit of the plaintiff is barred by limitation?OPD”

Now, vide the impugned order dated 16.12.2016, the following issues were struck after 'reframing':-

- “1. Whether the plaintiffs are exclusive owners in possession of the suit land?OPP
2. Whether the plaintiffs are entitled to the relief of declarations and injunctions as prayed for?OPP
3. Whether the defendant no.1 was co-sharer in possession of the suit land prior to purchasing share of defendant no.2?OPD (defendant no.1).
4. Whether the defendant no.1 is a bonafide purchaser and owner in possession of the share of defendant no.2 in the suit land?OPD (defendant no.1).
5. Whether the plaintiff has concealed true and material facts from the Court?OPD
6. Whether the suit is not maintainable in the present form, as per the provisions of Law ?OPD.”

The contention on behalf of the petitioner therefore is that though the trial court in the impugned order has observed that the issue of limitation is already covered under the issue of maintainability (obviously issue no.6 in the reframed issues), the specific issue on limitation as had been framed vide the order dated 12.03.2014 has been omitted, with this court in any case having left it open to the petitioner to take that plea *qua* the challenge to the sale deed “at the appropriate stage”.

Mr. Vij, learned counsel for the respondents, on the other hand submits that, firstly, it already having been made clear by the trial court that

the issue of limitation is covered within issue no.6, i.e. on the maintainability of the suit itself, and further that issue no.10A already having been framed vide the order dated 12.03.2014 (as reproduced herein above), the application itself filed by the petitioner, seeking re-framing of the issues, was not maintainable.

It is to be noticed that in the application of the petitioner by which he sought framing of additional issues, the following additional issues were sought to be framed:-

“1. Whether the plaintiff has not come to the court with clean hands and has suppressed true and material facts from the Court?OPD

2. Whether the suit of the plaintiff seeking registered sale deed bearing Vasika no.8216 dated 18.07.2005 in favour of defendant no.1 as void ab initio, nonest, nullity and illegal etc., is barred by limitation?OPD”

He further sought substitution of issue no.3 framed earlier, with the following issue:-

“3. Whether the defendant no.1 continued to be co-sharer in possession of the suit land prior to purchasing share of other co-sharer/defendant no.2 and he is bona fide purchaser thereof vide registered sale deed bearing Vasika no.8216 dated 18.07.2005?OPD”

Mr. Vij has further pointed out that issue no.10A as reproduced herein above having been framed on 12.03.2014, is not specific to the sale deed in question, and that order never having been challenged by the petitioner, now by moving an application more than 2½ years later, he could not pray for substitution of that issue.

Having considered the matter, though Mr. Vij is correct to the

extent that the issue on limitation already having been framed on 12.03.2014, a reframing of that very issue more than 2 ½ years later would not be called for, yet the reframing of the issues vide the impugned order not having been challenged by the respondents, it is considered appropriate that issue no.10A as framed vide the order dated 12.03.2014, be now included as issue no.7 in the re-framed issues, the petitioner in any case not being aggrieved of any of the other issues framed by the trial court vide the impugned order.

The petitioner having filed the application more than 2 ½ years after the order 12.03.2014 was passed, despite allowing this petition, the additional issue ordered to be added to the issues framed vide the impugned order, would only be subject to payment of Rs.5,000/- as costs by the petitioner.

29.04.2019

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(Amol Rattan Singh)**Judge****Whether speaking/reasoned : Yes****Whether reportable : Yes**