

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

**C.R. No 4778 of 2019
Date of decision : 13.12.2019**

Mahabir Singh

....Petitioner

versus

Ram Karan and ors.

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Ajay Jain, Advocate
for the petitioner.

Mr. Aashish Chopra, Advocate with
Ms. Gurpreet Randhawa, Advocate
for the respondents.

RITU BAHRI, J. (Oral)

Challenge in this petition is to order dated 22.05.2019 passed by learned Civil Judge (Jr. Divn.) Rewari where by application filed by defendant No. 1 to 4/petitioner for re-casting issue No. 9 has been ordered to be dismissed.

A bare perusal of the impugned order shows that on 12.10.2018, plaintiffs/respondent Nos. 1 to 2 filed a suit for declaration and permanent injunction wherein they have challenged the judgment and decree dated 03.10.1977 passed in Civil Suit No. 257-1977, mutation No. 183, subsequent revenue record, mutation No. 2511 and registered transfer deed No. 2768 dated 09.02.2018 being null and void. In this suit, the petitioner/ defendant No. 1 to 4 filed written statement (P-2) taking a plea that the suit is barred by limitation. The issues were then framed on 22.04.2018 and thereafter, an application was filed on 07.05.2019 (P-4) for framing additional issue regarding limitation by petitioner/defendant No. 1 to 4 on the ground that trial Court inadvertently omitted to frame issue regarding limitation and the same was allowed on

07.05.2019 without even calling for a reply from the plaintiff and additional issue No. 9 was framed which reads as under:-

“9. Whether the suit of plaintiffs is within limitation?OPD’

The grievance of the petitioner before this Court is that the burden of proof was placed upon defendant Nos. 1 to 4/petitioner, which is a mistake as burden of proof of the said issue should be placed upon the plaintiffs. The plaintiffs have sought declaration that judgment and decree dated 03.10.1977 is null and void. Thus, the application filed by the petitioner for re-casting issue No. 9 has wrongly been dismissed.

Learned counsel for the respondents states that till date the plaintiff has examined three witnesses.

Keeping in view the above fact and the fact that three witnesses have already been examined by the plaintiff, the revision petition stands allowed and order dated 22.05.2019 is set aside. The onus is on the plaintiff to lead evidence on issue No. 9. However, a direction is given to the trial Court to conclude the proceedings in the civil suit, within a period of eight months.

December 13, 2019
G Arora

(RITU BAHRI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No