

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

**SAO No. 70 of 2015 (O&M)
Date of Decision: May 14, 2019**

Ranjodh Singh

.....APPELLANT

VERSUS

Hoshiar Singh and others

.....RESPONDENTS

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. S.S.Rangi, Advocate and
Mr. Saurav Bhatia, Advocate
for the appellant.

None for respondent No. 1.

Mr. Sourabh Goyal, Advocate
for respondents No. 2 to 4.

SURINDER GUPTA, J.(Oral)

Heard.

The suit filed by plaintiff-appellant seeking the relief of declaration of his ownership regarding the suit land and consequent relief was decreed by the trial Court vide judgment and decree dated 29.02.2012. Some of the defendants namely Sukhdev Singh, Balwinder Singh and Amarjit Singh filed appeal and learned Ist Appellate Court observed that the lower Court had not framed proper issues in this case which had resulted in serious miscarriage of justice. After discussing the entire matter, learned Ist Appellate Court proceeded to frame an additional issue as per the application dated 15.04.2005 filed by defendants No. 2 to 4. The relevant observations of the Ist Appellate Court are reproduced as follows:

“In the light of the same, at this stage, I deem it appropriate to frame an additional issue as per application dated 15.04.2005 relied upon by the defendants.”

However, additional issue was not framed and learned Additional District Judge, Ludhiana remanded the case with the observations as follows:

“In the light of framing of the aforesaid additional issue, which has been omitted, at the earlier stage, it is appropriate to give an opportunity, to the parties concerned to lead evidence, upon the same and the matter be re-adjudicated, in the light of the evidence, so coming forth.”

It has been fairly conceded by learned counsel for respondents No. 2 to 4 that no specific issue was framed by the Ist Appellate Court while remanding the case.

Order 41 Rule 25 of Code of Civil Procedure which deals with the framing additional issue in appeal reads as follows:

Where Appellate Court may frame issues and refer them for trial to Court whose decree appealed from- *Where the Court from whose decree the appeal is preferred has omitted to frame or try any issue, or to determine any question of fact, which appears to the Appellate Court essential to the right decision of the suit upon the merits, the Appellate Court may, if necessary, frame issues, and refer the same for trial to the Court from whose decree the appeal is preferred, and in such case shall direct such Court to take the additional evidence required; and such Court shall proceed to try such issues, and shall return the evidence to the Appellate Court together with its findings thereon and the reasons therefor [within such time as may be fixed by the Appellate Court or extended by it from time to time].*

As per the procedure prescribed in Order 41 Rule 25 CPC, the Ist Appellate Court is competent to frame additional issues which it finds essential for right decision of the case on merits. Thereafter, it can refer the matter to the trial Court to record the additional evidence as required or can itself proceed further to record the same and then decide the appeal on merits.

It is evident from the order passed by the Additional District Judge, Ludhiana that despite mentioning in the order that additional issue is framed but no such issue was framed. The framing of additional issue is no reason to set aside the judgment of the trial Court and remand the case. In the event of additional issue being framed, the Ist Appellate Court has to follow procedure under Order 41 Rule 25 CPC to proceed further in the matter.

In view of the above facts, order of the learned Additional District Judge, Ludhiana dated 13.07.2015 is set aside and the appeal is accepted. Parties are directed to appear before the concerned Court/Successor Court on 30.05.2019, on which date file of Civil Appeal No. 202 dated 21.03.2012 decided on 13.07.2015 shall be taken on Board and proceeded further in view of above observations.

May 14, 2019
Jyoti-II

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***