

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

CR No.38 of 2019

Date of Decision : 09.01.2019

Surjit Kaur since Deceased through her LR's and others

.....Petitioners

Versus

Pardaman Singh and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present : Mr. Aayush Gupta, Advocate
for the petitioners.

SUDIP AHLUWALIA, J. (ORAL)

This revision is directed against the order passed by the Ld. Additional District Judge, Ludhiana on 12th September, 2018 in RBT/CA No.06 dated 16th January, 2013, which had been filed on behalf of the petitioners against the original Judgment and Decree passed by the Ld. Civil Judge (Senior Division), Ludhiana in Civil Suit No.653 dated 14th October, 1996 and Civil Suit No.217 dated 21st March, 1997.

2. The grievance of the petitioners before the Ld. Appellate Court was that both the suits have been decided by the Ld. Trial Court without framing any material issues relevant to the factum of the controversies involved, and therefore had sought remanding back the matter for fresh adjudication by the Ld. Trial Court after framing of appropriate issues.

3. The Ld. Appellate Court however was not convinced by the petitioners' contention, and rejected their prayer by observing *inter alia*-

“In view of all these facts, all the questions of controversy involved in the present suit have been dealt with by the learned trial court. It is a settled law that if the parties are aware about the case of each other and if any specific issue has not been framed, that will not cause any prejudice to the parties. No useful purpose will be served by framing formal issues. The issues are framed only for the purpose of regulating the proceedings in the suit. It is well settled that omission to frame an issue of fact is not fatal for the suit when the parties went to trial knowing fully well their rival case and led evidence not only in support of his case but also to challenge the case of the adversary. As such, absence to frame specific issue on the points raised and to be decided is not fatal and the finding is not liable to be set aside only on the ground of non-framing of issues. The appellant has also failed to show as to what prejudice has been caused to him on account of non-framing of such issues. I find support from the ratio laid down in case Charanjit Versus Nagar Panchayat Begowal 2010(1) R.C.R.(Civil) 121. If the case is remanded back to the trial Court, it will lead to de novo trial. Moreover, at the time of passing final judgment, both the cases were clubbed and in connected case, proper issues have already been framed.”

4. Considering the nature of order this Court is inclined to pass, service of notice upon the respondents would not appear to be necessary in the given facts and circumstances.

5. Grievance of the petitioners is that specific facts ought to have been scrutinized in the light of the conflicting pleadings of the parties, and appropriate and specific issues as a consequence thereof needed to be framed for a proper and effective adjudication. From their side in their grounds of appeal before the Ld. Appellate Court (Annexure P-4), in item-(i), the petitioners have mentioned about certain issues which ought to have been considered by the Ld. Trial Court in a specified manner.

6. Undisputedly, appellate proceedings are regarded as continuation of the original suit and it is well settled that issues can be framed or recast at any stage during the proceedings.

7. In these circumstances, this Court is of the opinion that while the Ld. Appellate Court was right in refusing to remand the matter back to the Ld. Trial Court for fresh adjudication, but it ought to have nevertheless taken note of the issues mentioned in the grounds of appeal to determine which of them were actually material for the purpose of effective adjudication.

8. Consequently, the present revision is disposed off with a direction upon the Ld. Appellate Court to identify specified issues as

suggested on behalf of the petitioners as also the respondents, if any,
and to pronounce its findings upon the same after hearing both sides
and on the basis of the material already on record.

January 09, 2019

(SUDIP AHLUWALIA)
JUDGE

Dpr

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No