

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

-:-

**CR. No.298 of 2021 (O&M)
Date of Decision:19.02.2021**

Bhagwani Bai (Deceased)
through Legal Representatives

.....Petitioner(s)

Versus

Bhiwani Ram & Others.

.....Respondents

CORAM: HON'BLE MRS. JUSTICE ALKA SARIN

Present: Mr. Raj Kumar Gupta, Advocate for the petitioner(s).

ALKA SARIN, J.

The present civil revision petition has been filed by the plaintiff-petitioners challenging the order dated 03.02.2021 (Annexure P-6) passed by the Trial Court dismissing their application for framing of an additional issue.

The facts in brief are that in 2008 the plaintiff-petitioners filed a civil suit for declaration, possession and injunction *inter-alia* impugning a decree dated 12.08.1980 and eleven sale deeds executed between 1996 and 2007. Written statements were filed and on 23.05.2014 issues were framed. The plaintiff-petitioners closed their evidence while the evidence of the defendant-respondents was closed on 17.12.2020. The suit was adjourned to 23.12.2020 for rebuttal evidence and arguments.

The website of the Trial Court discloses that on 15.01.2021 the plaintiff-petitioners filed an application for production of certain documents in rebuttal evidence. However, On 22.01.2021, the counsel for

the plaintiff-petitioners suffered a statement that he did not press the application for production of documents and also filed an application for framing of an additional issue to the effect “*Whether Sohari Bai was the wife of Vasanda Ram and Vasanda Ram was having two daughters namely Bhagwani Bai (plaintiff) and Radha Bai (proforma defendant) ?*”. In this application (Annexure P-3) it was stated that due to oversight and inadvertence the said issue could not be framed earlier when issues were framed by the Trial Court and that the said issue was very much necessary for the due adjudication of the matter in controversy between the parties and for the just and proper decision of the civil suit. Replies to the said application were filed by the contesting defendant-respondents which replies have been attached as Annexures P-4 and P-5. They stated that the application had been filed only to prolong the matter and that the civil suit was fixed for rebuttal evidence and arguments and at this stage no new issue could be framed and that the application had been filed to fill up the lacunae. Vide impugned order dated 03.02.2021 (Annexure P-6) the Trial Court dismissed the application (Annexure P-3). Hence, the present civil revision to challenge the said order.

Learned counsel for the plaintiff-petitioners has contended that the Trial Court has erred in dismissing the application for framing of an additional issue. According to him the relationship between Vasanda Ram and the plaintiff-petitioners and the proforma defendant was relevant and necessary for determination of the controversy. According to learned counsel, Vasanda Ram had a wife, Suhari Bai, and two daughters – Bhagwani Bai and Radha Bai – and this fact has been denied in the written statements and, as such, an issue ought to have been framed as

mentioned in the application Annexure P-3. Reliance has been placed on the decisions in “**Hari Chand Vs. Krishan Kumar**”[1998(3) CCC 37], “**Rajinder Tandon Vs. Thomas Nasir Masih**” [1999(1) CCC 702], and “**Sher Singh Vs. General Public**” [2002(1) CCC 546] to buttress his contentions that an additional issue can be framed at any time before passing of the decree and that it is the duty of the Court to frame proper issues.

I have heard counsel for the plaintiff-petitioners.

As many as eleven issues were framed by the Trial Court on 23.05.2014. The order dated 23.05.2014 reveals that no other issues were pressed or claimed by the parties. At that point the plaintiff-petitioners were aware that the defendant-respondents had in their written statements denied the relationship of Vasanda Ram with the plaintiff-petitioners and the proforma defendant. Despite this knowledge, no other issues were pressed for or claimed by them on 23.05.2014. Thereafter, the parties i.e. the plaintiff-petitioners and the defendant-respondents have led their respective evidence. Now at the time of rebuttal evidence and final arguments the application (Annexure P-3) was filed for framing an additional issue. It is also to be noted that before filing this application (Annexure P-3) the plaintiff-petitioners had filed an application for production of certain documents which application was not pressed by them on 22.01.2021. The attempt on the part of the plaintiff-petitioners is to fill-up the lacunae in their case and that too when the civil suit is at its final stage. Framing of the additional issue now would necessarily also entail leading further evidence to prove the additional issue and would infact lead to a de-novo trial of the civil suit. The civil suit has been

pending since 2008. Considering all these factors, this Court does not find any irregularity or illegality in the impugned order dated 03.02.2021 (Annexure P-6) passed by the Trial Court.

The judgements cited by learned counsel for the plaintiff-petitioners are distinguishable and not applicable to the facts and circumstances of the present case where the plaintiff-petitioners have been themselves been lethargic in pursuing their remedy and have woken up at the final stages of the civil suit. No doubt it is the duty of the Court to frame the proper issues but when the issues were framed in the civil suit on 23.05.2014, no party either pressed or claimed any other issue and participated in the proceedings thereafter without demur. The plaintiff-petitioners have not given any plausible explanation for not seeking framing of the additional issue earlier especially when they were all-along aware about the contents of the written statements filed by the defendant-respondents.

In view of the discussion above, finding no merit in the civil revision, the same is dismissed. The Trial Court is requested to endeavour and expeditiously decide the civil suit which is pending since 2008.

Dismissed.

February 19, 2021
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(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
 Whether reportable: Yes/No