

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

CR-3014-2022

Date of decision : 01.08.2022

Poonam Sehgal and another

...Petitioners

Vs.

Davinder Sehgal and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Ms. Shivya Sehgal, Advocate for the petitioners.

MANOJ BAJAJ, J.

Petitioners (plaintiffs) have approached this Court under article 227 Constitution of India to challenge the order dated 07.04.2022 (Annexure P-4) passed in Civil Suit No.3694 dated 19.08.2015 by Civil Judge (Junior Division), Ludhiana, whereby their application under Order 14 Rule 5 CPC for framing additional issues, has been dismissed.

The brief facts of the case are that the petitioners and respondent No.3 (plaintiffs) filed a suit seeking declaration that they are owners of half share in building B-XI-157 (old) and B-XII-335 (new) situated at Shahpur Road, Ludhiana and also sought mandatory injunction against defendants to vacate the suit property for handing over the vacant possession to the plaintiffs and also claimed mesne profits for use and occupation of the suit property @ Rs.10,000/- per month. As per the pleadings, the suit property was initially owned by two brothers, namely, Gurinder Sehgal and Surinder Sehgal on the basis of sale deed dated 02.09.1970 and both started enjoying the ownership to the extent of half share. The father of defendants, namely, Sham Lal Sehgal approached the owners for giving the suit property to them on licence, with an understanding that as and when required, they would vacate it and believing

the promise, the father of defendants was allowed to live in the property. After the death of Sham Lal Sehgal, his widow and children were allowed to use the suit property. After death of Gurinder Sehgal, plaintiffs became owner of the property being his legal heirs and when they approached the defendants with a request to vacate the property, they denied the share of plaintiffs and refused to vacate the property and claimed title. On this cause of action, plaintiffs filed the above suit.

The suit is being contested by defendants by filing written statement, who have raised preliminary objections regarding *locus standi*, maintainability and lack of Court fee etc., and on merits pleaded that their predecessor-in-interest Sham Lal Sehgal had been in possession of the property for the last more than 50 years and after his death, they are continuing in possession of property. The averments relating to handing over the property on license to Sham Lal Sehgal by predecessor-in-interest of the plaintiffs were also denied and the defendants have set up a title by way of adverse possession. In the end, it was prayed that the suit be dismissed.

After completion of pleadings, the trial Court proceeded to frame the issues and thereafter, the parties adduced their respective evidence. During the pendency of the suit, petitioners (plaintiffs) filed application under Order 14 Rule 5 CPC for framing of following additional issues:-

1. *Whether the defendants have become the owner of the suit property by way of adverse possession? OPD*
2. *Whether Gurinder Sehgal and Surinder Sehgal purchased the property in dispute vide sale deed dated 2.9.1970? OPP*

The said application was contested by respondents (defendants) by filing their reply and considering the pleadings, Civil Judge (Junior Division),

Ludhiana vide impugned order dated 07.04.2022, dismissed the application.

Learned counsel has argued that the impugned order is not sustainable as the issues proposed to be additionally framed are material and go to the root of controversy between the parties, therefore, impugned order deserves to be set aside. Learned counsel has argued that the framing of issues facilitates the Court itself to adjudicate the controversy between the parties effectively, and if, the issues are lacking in substance, it may result in miscarriage of justice. She further submits that the issues can be altered or additionally framed at any stage before the final decision of the suit and in support of her argument, she has relied upon judgment delivered by Hon'ble the Supreme Court in “*Makhan Lal Bangal Vs. Manas Bhunia and others*”, (2001) 2 SCC 652, judgment passed by Himachal Pradesh High Court in “*Raminder Singh Kapany Vs. Parminder Singh Kapany*”, 2020 (1) Civil Court cases 163, and judgment passed by Andhra Pradesh High Court in “*K.Abdul Raheem (Died) Per LRs. and others Vs. Hajeerappa and others*”, 2005 (3) Andh LD 15.

After hearing learned counsel and considering the material on record, this Court finds that the after commencement of trial, both the parties adduced their respective evidence and suit had reached at final stage of decision, when the plaintiffs filed application for framing of additional issues. The plaintiffs have claimed the relief of declaration on the basis of title inherited by way of natural succession, therefore, it is for them to adduce relevant evidence to discharge the onus upon issue Nos.1 and 2 framed originally, which were properly framed, whereas rest of the issues i.e issue Nos.3 to 7 relate to the pleadings of the respondents/defendants. The argument

of the learned counsel that since the defendants have set up a plea of adverse possession, the necessary issue has not been framed, is misplaced as the exercise of framing issues is aimed to apprise the rival parties about the plea set up by them against each other. Admittedly, the defendants have set up a plea of adverse possession, but they have already adduced their evidence, therefore, the framing of proposed additional issues do not seem to be necessary, as far as the case of the plaintiffs and their averments regarding claiming the title of the suit property is concerned. Besides, the issues already framed by the Court are wide enough in essence and would cover the dispute between them.

Further, the judgment relied upon by learned counsel in Makhan Lal Bangal's case (supra) relates to the election petition based upon the grounds of corrupt practices consisting of several allegations, therefore, in that context, it was observed by Hon'ble Supreme Court that one sweeping issue relating to various corrupt practices may not be sufficient. Similarly, the other judgment in Raminder Singh Kapany's case is distinguishable on facts as in the said case, the parties had propounded different wills in their favour, therefore, in that context, it was held that framing of issues in relation to the Will propounded by defendant is necessary. In K.Abdul Raheem's case, the plaintiff had brought a suit for permanent injunction and the same was dismissed by the trial Court and the appellate Court while analyzing the correctness of the impugned judgment and decree observed that the plaintiffs have claimed adverse possession, therefore, it remanded the case before the trial Court with direction to frame the additional issue in this regard, but the said judgment is not applicable in the present case as adverse possession is claimed by the defendants, who have not set up any counter claim.

Apart from it, once the grounds set up by the rival parties are known to each other, stress cannot laid upon the framing of the issues at the final stage of the suit, unless the serious prejudice is caused to any of the parties. By now it is well settled law that merely because a particular issue is not framed on a disputed fact, but where parties are well aware about their respective stand in relation to the said fact, this omission of framing the relevant issue may not be significant, particularly at a stage when parties have already adduced their respective evidence.

Further the reading of the impugned order reveals that Civil Judge (Junior Division), Ludhiana has carefully examined the prayer made by plaintiffs for framing the additional issues and has given valid reasons for rejecting the said prayer. Thus, the impugned order does not suffer from any illegality or impropriety.

Resultantly, the revision petition fails and is dismissed.

(MANOJ BAJAJ)
JUDGE

01.08.2022

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Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No