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(1999) 1 CivCC 702 : (1999) 121 PLR 270 : (1999) 1 RCR(Civil) 539

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 1342 of 1998

Rajinder Tandon	APPELLANT
Vs	
Thomas Nasar Masih and Others	RESPONDENT

Date of Decision: Nov. 26, 1998

Acts Referred:
Civil Procedure Code, 1908 (CPC) â€" Order 14 Rule 5

Citation: (1999) 1 CivCC 702 : (1999) 121 PLR 270 : (1999) 1 RCR(Civil) 539

Hon'ble Judges: V.S. Aggarwal, J

Bench: Single Bench

Advocate: B.R. Mahajan, for the Appellant; Pawan Kumar, for the Respondent

Final Decision: Allowed

Judgement

V.S. Aggarwal, J.
Civil Suit has been filed by Thomas Nasir Masih and Ors. for declaration to the effect that they are owners in

possession of the house in question to the extent of 2/7th share after the death of Sardar Masih on 14.8.97. Permanent injunction had also been

claimed to restrain the defendants, namely, the petitioner and some other persons from handing over the property in question to the extent of more

than their share without getting their share separated and handing over the possession of the same to the intending purchaser till the property is not

fully partitioned. Sale deed dated 21.12.94 purported to have been executed by Joseph (defendant No. 1 in the suit) in favour of Joseph

(defendant No. 1 in the suit) in favour of the petitioner was described to be illegal and void and not binding on the claim of the plaintiffs. Ad-interim

injunction had been claimed too. Needless to say that the civil suit was contested by Joseph-defendant No. 1 in the suit and also by the present

petitioner. Issues were framed.

2. Petitioners had submitted an application seeking framing of additional issue. The said application was dismissed.

3. It goes without saying that it is the duty of the Court to frame issues. The same should be framed correctly taking note of the controversy that

arises from the pleadings of the parties for the disposal of the suit. From the pleadings of the parties, it is abundantly clear that it is in controversy

whether the property was purchased by the said defendant vide sale deed dated 22.12.93 and Sardar Masih had executed a will dated 13.1.87.

Once it is so, merely because the petitioner had on earlier occasions not claimed the additional issue will not debar them from approaching the

Court for framing the additional issue. It is for the added reason that the evidence has not yet started in the trial Court.

4. Accordingly, the petition is allowed in part and the above said issued are directed to be framed and thereafter the trial may proceed in

accordance with law.