

**(2001) 05 P&H CK 0182**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Civil Revision No. 4893 of 1999

Sher Singh

APPELLANT

Vs

General Public

RESPONDENT

**Date of Decision:** May 18, 2001

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 14 Rule 5

**Citation:** (2002) 1 CivCC 546 : (2001) 3 RCR(Civil) 780

**Hon'ble Judges:** R.L. Anand, J

**Bench:** Single Bench

**Advocate:** Mr. Sanjay Vij, for the Appellant; Mr. C.B. Goel, for the Respondent

**Final Decision:** Partly Allowed

**Judgement**

R.L. Anand, J.

This revision petition has been directed against the order dated 13th September, 1999 passed by the Civil Judge (Junior Division), Gur-gaon, but dismissed the application of the petitioners under Order 14, Rule 5 of the CPC for framing of the additional issue.

2. The plaintiff-petitioners filed a suit for declaration with a consequential relief of permanent injunction and in the alternative consequential relief for joint possession, in respect of the land detailed in the head-note of the plaint alleging that there are three sets of defendants represented by their different lawyers and these defendants have filed three written statements. Whereas the stand of defendant Nos. 13 and 14 in their written statement is that they have become owners of the land in question by way of adverse possession, while the stand of defendant Nos. 2 to 12 is that they are occupying the land on account of the fact that they are the occupancy tenants. This part of the defence of the defendants has been specifically denied by the plaintiffs in their replication. In this view of the matter, when the defendants have taken a specific plea with regard to adverse possession and

occupancy tenants, it was obligatory on the part of the court to frame a specific issue in this regard, which has not been framed at the time of framing of the issues and, therefore, an additional issue may be framed for proper adjudication of the matter,

3. Notice of the application was given to the respondents and he filed a reply to the application, and it was pleaded by them that the present application has been moved after a lapse of 9 years without assigning any reason. Moreover, no additional issue is required to be framed and that the controversy between the parties can be well covered by the issues which had already been framed by the trial Court which, in fact, the plaintiffs want to fill in the lacuna of this case by making proper application which is mala fide and is not legally maintainable.

4. The trial Court dismissed the application of the petitioners holding that it is a belated one and no further issue is required to be framed. In this manner, the application was dismissed vide impugned order dated 13th September, 1999. Hence the present revision.

5. I have heard Shri Sanjay Vij on behalf of the petitioners and Shri C.B. Goel on behalf of the respondents and with their assistance, have gone through the records of this case.

6. After the completion of the pleadings, it is the duty of the Court to go through them in a thorough and in the right perspective so that issues on a question of particular law and fact are framed. It is the primary duty of the Court to frame an issue and if the Court is not discharging its obligation in framing of the proper issue arising between the controversy raised by the parties in their pleadings, certainly the party affected, on account of this omission, is in its jurisdiction to file an application for recasting of the issue or for the framing of the additional issue. The delay in the trial scuttles the rights of the parties because if the issues are not properly framed, it will certainly give a serious prejudice to the parties. Equally, is the law that when the parties have led evidence by knowing the case of each other, then the onus with regard to the issues remains immaterial. In the present case, the plaintiffs have filed a suit for declaration that they are the owners in possession of the property by virtue of the fact that the land was earlier with Dholiars who had left and, therefore, it had reverted to the owners.

7. On the contrary, the stand of some of the defendants is that they are occupying the property in the capacity of occupancy tenants and there is defence of some of the defendants that they are in possession of the land by way of adverse possession and they have become the owners thereof. In these circumstances, it was obligatory on the part of the Court to frame a specific issue with regard to adverse possession. With regard to the proposed specific issue of occupancy tenant, I am of the opinion that this is a issue of defence in reply. Issue No. 1 which is to the following effect: "Whether the plaintiffs are the owners and in possession of the suit property?" So

far as plea of adverse possession is concerned, it cannot be said that this is an issue of defence in reply. The issue of adverse possession will be a question of law and fact. The onus of this issue will be on the party. Therefore, I partly allow this revision and frame the following additional issue which will be treated as issue No. 2-A in the trial Court and directions are given to the trial Court to give an opportunity to the parties to lead evidence on this additional issue and then proceed according to law and dispose of the suit within a period of six months from today. As I had already given this direction to the civil Court in a separate revision which I have disposed of vide my separate order of even date.

Additional Issue No. 2-A "Whether the defendants have become owners of the suit land by way of adverse possession as alleged by them ? OPD"

The parties through their counsel are directed to appear before the trial Court on the next date of hearing. Revision allowed in part.

8. Revision partly allowed.