
(1996) 05 P&H CK 0169
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 181 of 1996

Smt. Shanti

APPELLANT

Vs

Tarawati and Others

RESPONDENT

Date of Decision : 09-05-1996

Acts Referred:

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

Citation : (1996) 2 CivCC 714 : (1996) 114 PLR 413 : (1997) 1 RCR(Civil) 615

Hon'ble Judges : Sarojnei Saksena, J

Bench : Single Bench

Advocate : R.S. Mittal and J.S. Chandel, for the Appellant; Hari Mittal, for the Respondent

Final Decision : Dismissed

Judgement

Sarojnei Saksena, J.

1.The facts of the case are that Harpat and Karma were the sons of Umru. Harpat died in 1947 leaving his sole heir plaintiff-petitioner Shanti. Karma died leaving two daughters Tarawati and Ram Piari. Tarawati is defendant No.1. Ram Piari also died. Her son Thambu is defendant No. 2. Plaintiff-petitioner Shanti filed a suit for declaration that she is owner in possession of 1/4th share of Harpat in the joint Khewat. Her suit was decreed by the trial Court. Tarawati and others filed Civil Appeal No. 185-88 against that judgment and decree. When that appeal was pending, they moved an amendment petition and while allowing that amendment petition the appellate Court set aside the lower Court's judgment and decree. Plaintiff-petitioner filed revision against that order of the appellate Court, which was allowed by this Court and the appellate Court was directed that it should call for a report from the trial Court on the issues arising out of the amended written statement and after receiving the report, the appeal should be decided by the appellate Court. Till then the appeal was to remain pending before the appellate Court. Thereafter the appellate Court framed issues by impugned order dated December 18, 1995, as under :-

"4-A. Whether the suit is within limitation? OPP.

4-B. Whether the parties are governed by Customary law, if so to what effect? OPD.

4-C. Whether the property in dispute is ancestral property, if so to what effect? OPD.

4-D. Whether the suit is collusive/ OPD."

2. The plaintiff-petitioner has filed this revision against this order of the appellate Court.

3. The petitioner's learned counsel contends that under the orders of this Court the appellate Court was required to frame additional issues on the basis of the amended pleas incorporated by the defendants in their written statement. His contention is that in the original written statement the plea of limitation was already taken. No issue was framed thereon but still the trial Court has decided this plea while decreeing the plaintiffs suit. About issue No. 4-B he has no objection, but his further contention is that issues 4-C and 4-D could not have been framed as they do not fall within the ambit of the amended pleadings and thus, framing of these issues is beyond the direction of this Court.

4. The defendant-respondents' learned counsel has placed on record amendment petition. A perusal of this petition reveals that in paras 1 and 3 specific pleas were raised about limitation, custom and ancestral property. Thus, in my considered view, the appellate court has rightly framed issues 4-A, 4-B and 4-C.

5. So far as issue No. 4-D is concerned, in the original written statement there is a specific plea that the suit is filed in collusion with defendant No.3. At that time no such issue was framed but when appellate Court was framing additional issues under the directions of this Court, after the amendment was made by the defendants in their written statement, it has framed issue No.4-D. Under Order 14 Rule 5 CPC the Court has jurisdiction to frame issues at any point of time, Secondly, it is too much to argue that under the orders of this Court only those issues were required to be framed which arose from the amended plea. If in the original written statement there was a specific plea and if no issue was framed by the trial Court, the appellate Court was not debarred from framing that additional issue. On this premise the objections raised by the plaintiff-petitioner's learned counsel are devoid of any substance.

6. There is no illegality or infirmity in the impugned order. It is neither beyond jurisdiction nor it is wrong exercise of jurisdiction. Revision being meritless is hereby dismissed with costs, which are quantified at Rs. 500/-.