
the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989.

(21) Accordingly, both the petitions are dismissed.

R.N.R.

Before Swatanter Kumar, J

PIARA SINGH & OTHERS,—Petitioners

versus

BHUPINDER KAUR & ANOTHER,—Respondents

C.R. No. 269 of 2000

2nd March, 2000

Code of Civil Procedure, 1908—0.14 Rl. 5—Trial Court dismissing the suit of the plaintiffs—Appeal before the Appellate Court pending—After 3/4 years, plaintiffs filing application under 0.14 Rl. 5 CPC for framing of an additional issue—Appellate Court dismissing the application—Plaintiffs faced the complete trial without prejudice & demur—No grievance made in memorandum of appeal—Plaintiffs not sincerely & seriously aggrieved—Additional issue cannot be framed.

Held that, a party when claims no issue before the Court and undertakes the entire trial on the basis of the issues framed, as a matter of course, cannot be permitted to claim framing of additional issues at the appellate stage as a matter of right. The objection with regard to non-framing of issues ought to be raised at the initial stage of the suit and in any case in the memorandum of appeal, if the party is sincerely and seriously aggrieved by non-framing of a particular issue on a fact.

S.N. Chopra, Advocate for the petitioner.

JUDGMENT

Swatanter Kumar, J.

(1) Challenge in this revision is to the order dated 29th November, 1999 passed by the learned Additional District Judge,—Fatehgarh Sahib. The facts relevant for the determination of the controversy in

issue in this revision are that the plaintiffs had filed a suit for declaration and permanent injunction alleging themselves to be the heirs of Karam Singh and also claimed interest in the suit property on the basis of a will in their favour by the deceased, to the exclusion of his real brother Pritam Singh.

(2) The suit was contested by the defendants. The learned trial Court *vide* the judgment and decree in the year 1995, dismissed the suit. The unsuccessful plaintiffs filed an appeal before the learned first appellate Court. During the pendency of the appeal an application was filed under Order 41 Rule 27 of Civil Procedure Code on 27th October, 1999 and also filed an application under Order 14 Rule 5 of the code for framing of additional issues. Both these applications were dismissed by the learned first Appellate Court *vide* its order dated 29th November, 1999.

(3) Learned counsel for the petitioners contended that in this revision the petitioners are primarily challenging the dismissal of the application filed by them before the first Appellate Court for not framing issues under Order 14 Rule 5 of the Code as prayed by applicant. In this regard the learned first Appellate Court had held as under:—

“It is well settled that when once the party goes to trial after knowing their case well, the non-framing of the issue and even the absence on pleadings does not prejudice their case and non-framing of the issue becomes immaterial.

I find support to my this view from the authorities in *Nagubal vs. B. Sharma Rao AIR 1956 Supreme Court 593*, *Nadunari Kameswaramma vs. Sampati Subba Rao, AIR 1963 Supreme Court 884*. In which it was held that when once the parties go to trial knowing fully well about the case then non-framing of the issue is immaterial and in case *Gurbax Singh vs. Harbhajan Singh (1990(2) SLJ 744* it was held that once the parties go to trial after knowing their case well. The absence of an issue or even of a pleading does not prejudice their case.”

(4) The learned counsel for the petitioners while relying upon a judgment of this Court in the case of *Union of India and another Versus M/s Goverdhan Dass, P.A.* (1) contended that framing of issues

(1) 1973 Revenue Land Reporter 14

was obligation of the learned trial Court and in the event of non-framing of issues, the learned first Appellate Court ought to have allowed the application under consideration of that Court.

(5) It is not disputed that no issue was framed nor was sanctioned as has been prayed in the application for framing of additional issues before the learned trial Court in regard to the alleged relationship of the deceased Pritam Singh. Despite certain facts being vaguely stated in the replication no issue was claimed during the entire trial. The Petitioners faced the complete trial of the suit without prejudice and demur and in fact voluntarily closed the evidence on all the issues based on its pleadings. Another factor which the Court must look into is that even in the grounds of appeal which was filed by the petitioners before the learned First Appellate Court, it was nowhere stated that the learned trial Court had erred in not framing the issues which were claimed at any point of trial of the suit by the petitioners. It must be noticed that separate grounds had been taken up in regard to each issue. Ground No. 12 related to Issue No. 2 while ground No. 13 related to issues No. 2-A and 3. The appellant before the first Appellate Court did not even raise such a ground in the grounds of appeal. The appeal is pending before the First Appellate Court now for a number of years and when the matter was being finally heard, the present application was filed. The learned First Appellate Court in addition to other reasons also observed that the application was filed primarily with the intention to delay the hearing and disposal of the appeal.

(6) Principle of waiver is applicable to framing of issues though depending on the facts and circumstances of a given case. A party when claims no issue before the Court and undertakes the entire trial on the basis of the issues framed, as a matter of course, cannot be permitted to claim framing of additional issues at the appellate stage as a matter of right. The objection with regard to non-framing of issues ought to be raised at the initial stages of the suit and in any case in the memorandum of appeal, if the party is sincerely and seriously aggrieved by non-framing of a particular issue on a fact. "Even the judgment relied upon by the learned counsel for the petitioner in the case of Goverdhan Dass (supra) had taken the same view. The duty of the Court to frame issues is not so absolute that it will exclude the applicability of the principle of waiver against the party concerned. The Court held as under:—

"It is no doubt true that the provisions of sub-rule (5) of rule 1 of Order 14, Civil Procedure Code, enjoins upon the trial Court

as held in the above mentioned decision the statutory duty to read the plaint and the written statement and to frame and record the issues on which the right decision of the case appears to depend after such examination of the parties as may appear necessary for the purpose of ascertaining upon what material propositions of fact or of law the parties are at variance. But I am, however, of the opinion that the parties cannot be absolved of their responsibility and if a party like the appellants of a party even if illiterate but assisted by a counsel does not watch its interest by having proper issues framed, then such a party should be presumed to have abandoned such issues which may arise from the pleadings of the parties but not framed by the Court.”

(7) The learned counsel for the petitioners then made another submission while relying upon the judgment in *Salig Ram & another v. Shiv Shankar and others* (2) that the replication had pleaded the facts in relation to that issue which were not disputed or controverted then those facts should have been taken to be accepted. Normally replication can be treated as a part of the pleadings with the leave of the Court. That in any case cannot be the controversy which would fall within the limited scope of this revision. The acceptance of an uncontroverted fact without any evidence and issue in that regard would hardly be of any consequence and specially when the replication was not taken on record with the leave of the Court. Even otherwise this argument may be of some consequence before the learned first Appellate Court when the Court adjudicates upon the merits of the appeal. As far as framing of additional issues is concerned, this judgment obviously renders no help to the petitioners.

(8) The petitioners have abandoned or waived their right to claim the issues. Their conduct is one which disentitle them of framing these issues. The application lacks bonafides. For these reasons this revision is dismissed in limine without any order as to costs.

S.C.K.