



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

RSA-1387-2024 (O&M)

Date of Decision: 25.03.2025

Tarlok Singh (Deceased) Through LRs

...Appellant

Versus

Jasjit Singh and Others

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Atul Goyal, Advocate
for the appellant.

Mr. Ivan Singh Khosa, Advocate
for respondents No.1 and 2.

VIKRAM AGGARWAL, J (ORAL)

This is defendant's appeal against the judgment and decree dated 17.02.2024 passed by the Court of learned Additional District Judge, Ludhiana dismissing the appeal filed by the defendant against the judgment and decree dated 24.04.2014 passed by the Court of learned Civil Judge (Junior Division), Ludhiana vide which the suit for declaration filed by the plaintiff was decreed.

2. At the outset, learned counsel for the parties are *ad idem* that since two applications moved by the present appellant, one for the framing of additional issues and the other for amendment of written statement were not decided by the First Appellate Court while deciding the appeal, the matter would have to be remanded.

3. Learned counsel for the appellant has placed reliance upon the judgment passed by this Court in the case of '*Sham Lal Vs. Raja Ram*' (*RSA No. 4492 of 2013, decided on 14.03.2022*) as also the judgment

passed by the Himachal Pradesh High Court in the case of '*Sarla Devi VS. Leela Devi*', 2009 (13) RCR (Civil) 199.

4. I have considered the submissions made by learned counsel for the parties.

5. It is trite law that whenever an application, be it an application for framing of additional issues or an application for amendment of written statement or any other application for that matter is filed during the pendency of an appeal, the same is to be decided. In so far as an application for additional evidence is concerned, the same has to be heard alongwith an appeal. The other applications have also to be decided before the matter is disposed of. Admittedly, in the present case, two applications i.e. an application for framing of additional issues and an application for amendment of written statement remained pending and were not decided by the Court of learned Additional District Judge, Ludhiana while deciding the appeal.

6. In the case of '*Sarla Devi Vs. Leela Devi*' (supra), the Himachal Pradesh High Court held that where an appeal had been decided without deciding an application for amendment, the judgment would not be sustainable. It was held that the amendment application is to be decided either prior to the appeal or at least at the time of decision of the appeal. Accordingly, the judgment and decree passed by the Court of learned Additional District Judge, Kangra was set aside and the case was remanded back to the concerned Court with a direction to decide the amendment application and appeal within a period of six months. Since in the present case also, two applications remained undecided, the appeal was erroneously decided.

7. Under the circumstances, the judgment and decree dated 17.02.2024 passed by the Court of learned Additional District Judge, Ludhiana is not sustainable. Accordingly, the same is set aside and the matter is remitted to the Court of learned Additional District Judge, Ludhiana to proceed in accordance with law keeping in view the settled position of law as has been stated in the preceding paragraphs.

8. Further, keeping in view that the suit was filed in 2009 and the appeal was filed in 2017, a direction is issued to the Court of learned Additional District Judge, Ludhiana to hear and decide the appeal including the above said applications within a period of 06 months from today.

The appeal is accordingly *disposed of* in the above terms.

(VIKRAM AGGARWAL)
JUDGE

25.03.2025

Prince Chawla

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No