

IN THE HIGH COURT OF PUNJAB AND HARYANA, AT
CHANDIGARH

CR No. 3277 of 2014

Date of Decision: 17.07.2015

Jaspal Kaur

.....Petitioner

Vs.

Manjit Kaur and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Satbir Rathore, Advocate,
for the petitioner.

Mr. Rakesh Gupta, Advocate,
for respondent No. 1.

None for respondent No. 2.

SABINA, J.

Petitioner has filed this petition challenging the order dated 23.04.2014, whereby application moved by the petitioner for framing of an additional issue, was dismissed.

Learned counsel for the petitioner has submitted that the defendant No. 1 in her written statement had taken the plea that the agreement to sell in question was a result of fraud. However, no issue was framed in this regard. Issue was necessary to be framed as to whether the agreement to sell in question was a result of fraud. In case, such as issue had been framed, petitioner would have got an opportunity to lead evidence in rebuttal qua the said issue.

Learned counsel for respondent No. 1, on the other hand, has opposed the petition and has submitted that the suit had been filed by the petitioner on the basis of agreement to sell dated 16.05.2006. It was for the plaintiff to establish the issue regarding execution of the said agreement to sell. Hence, no additional issue was necessary to be framed.

In the present case, petitioner has filed suit for specific performance of agreement to sell dated 16.05.2006. As per issue No. 1 framed by the trial Court, petitioner was required to establish as to whether defendant No. 1 had executed the agreement to sell in question in favour of the plaintiff on receipt of the earnest money. The plea put forth by defendant No. 1 that the agreement to sell in question was a result of fraud was liable to be established by defendant No. 1 while leading his evidence qua issue No. 1.

Moreover, learned counsel for respondent No. 1 has submitted that he does not claim framing of issue that the agreement to sell in question was a result of fraud as the said plea raised by defendant No. 1 would be covered while deciding issue No. 1. Now parties have concluded their evidence and the case is listed before the trial Court for arguments. It is settled proposition of law that mere non-framing of an issue would not make any difference as the parties know their case and lead evidence with regard to their respective pleadings. The trial Court will decide the suit on the basis of evidence led by the parties with regard to their respective pleadings.

In the facts and circumstances of the present case, the trial Court rightly declined the application moved by the petitioner for

framing of an additional issue.

Hence, no ground for interference is made out.

Dismissed.

**(SABINA)
JUDGE**

July 17, 2015
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