

In the High Court of Punjab and Haryana at Chandigarh

**Civil Revision No. 4778 of 2015
Date of Decision: 31.07.2015.**

Ram Parkash

.....Petitioner

Versus

Parmod alias Kalu and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. G.C.Shahpuri, Advocate
for the petitioner.

SABINA, J.

Petitioner has filed this petition under Article 227 of Constitution of India challenging the order dated 13.7.2015 (Annexure P-6) whereby application moved by the petitioner for framing additional issue, was dismissed.

Learned counsel for the petitioner has submitted that the issue now sought to be framed by the petitioner was very necessary for the just decision of the case. The defendants had denied the execution of the sale deed dated 25.7.1997 and had averred that it was a result of fraud and, hence, necessary issue was liable to be framed in this regard. In support of his arguments, learned counsel has placed reliance on '***Chebrol Sriramalu versus Vakalapudi Satyanarayana 2013(9) SCC 404***', wherein it was held as under:-

“4. *Shri Patil, learned senior counsel takes us through*

the evidence deposed by P.W.1 wherein a specific question was put to the Defendant as to whether he was aware that the suit property is an 2 ancestral property or not. In response to the said question, the Defendant/appellant has stated that the property is a joint family property. In spite of those statements, the Trial Court has not through it fit to frame an additional issue and decided the lis between the parties. In our view, the said issue is wholly relevant and significant for the effective disposal of the suit filed by the Plaintiff/Respondent.”

Learned counsel for the petitioner has next placed reliance on '**Harbhajan Singh' versus Jarnail Singh 2013(2) PLR 677**', wherein it was held as under:-

“2. The trial Court has rejected the plea of the plaintiffs and has held that the issue already framed regarding the enforceability of the agreement squarely covers the issue of whether the agreement was later superseded orally as regards the share of one of the defendants. The issues at the trial are struck to help the parties' focus on the respective contentions and allow for appropriate evidence to be brought for a proper adjudication. It is no doubt true that an issue regarding the enforceability of the agreement which is an admitted document is wide enough to admit of every subsidiary issue of what the defendant is now pleading to state that the plaintiffs are not entitled to such a relief. However, in my view, it is still not

sufficient and if the defendants are setting out a case as to why the plaintiffs are not entitled to obtain specific performance by the fact that there was a subsequent oral agreement, it would require to be specifically spelt out with the onus cast on him so that the issues are properly adjudicated. I, therefore, direct that the following issue shall be framed:-

"Whether the agreement of sale dated 8.4.2003 was cancelled by a subsequent oral agreement of sale as mentioned in para No.5 of the written statement? OPD."

In the present case, petitioner has filed suit for possession and mandatory injunction. Petitioner has based reliance on sale deed dated 25.7.1997. Defendants in their written statement averred that the sale deed was a forged document and plaintiff was neither owner nor in possession of the suit property.

On the pleadings of the parties, following issues were framed by the Trial Court:-

- "1. Whether the plaintiff is entitled to relief of possession as prayed for? OPP*
- 2. Whether the suit of the plaintiff is not maintainable? OPD*
- 3. Relief."*

During the pendency of the suit, plaintiff moved an application for framing of following issue as additional issue:-

"2A. Whether the sale deed no. 2790 dated 25.7.97 is an out come of fraud? OPD"

Plaintiff has sought relief of possession and had based reliance on the sale deed dated 25.7.1997. The issue now sought to be framed by the plaintiff would be covered under issue No. 1 already framed before the Trial Court. In order to rebut the evidence led by the plaintiff, defendants will lead evidence as to whether the sale deed was a result of fraud (if proved to have been executed). Moreover it is a settled proposition of law that non-framing of an issue is not fatal to the case of the parties as the parties know their case and lead evidence in support of their respective pleas. In the facts and circumstances of the present case, the learned Trial Court had rightly dismissed the application moved by the petitioner for framing of additional issue. The judgments relied upon by the learned counsel for the petitioner fail to advance the case of the petitioner as they are based on different facts.

No ground for interference by this Court is made out.

Dismissed.

**(SABINA)
JUDGE**

July 31, 2015
Gurpreet