

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

SAO No.59 of 2011 (O&M)
Date of Decision: 29.01.2015

M/s S. Rama Krishan Dyeing and Printing Works

. . . .Appellant

Versus

Satya Pal Khanna and others

. . . . Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: Mr.Anil Chawla, Advocate,
for the appellant.

Mr.Vikas Bahl, Sr. Advocate, with
Mr.Arjun Kundra, Advocate,
for the respondents.

RAKESH KUMAR JAIN, J. (ORAL)

M/s S. Rama Krishan Dyeing and Printing Works filed a suit for specific performance of the agreement to sell dated 8.8.1983 of the front portion and passage of 1/1/2 storied bungalow bearing private No.6 Khasra No.2548/1023 situated at R.B. Rattan Chand Road, Amritsar measuring 1025 sq. yards and also for permanent injunction restraining the defendants not to alienate the suit property in any manner.

All the three defendants contested the suit with the preliminary objection that the suit is not maintainable as it has been filed by Vijay Kumar although the agreement was executed through Gopal Dass as such there was a privity of contract only between defendants and Gopal Dass. No other objection was raised by the

defendants and on the pleadings of the parties, the trial Court framed as many as 12 issues on 9.12.1991. Ultimately, the trial Court decreed the suit on 30.3.2006 for specific performance of the agreement and also granted injunction.

Aggrieved against the judgment and decree of the trial Court, Satya Pal Khanna adopted son of Kishan Chand Khanna, who is the heir and legal representative of Ram Parkash Khanna filed the appeal in which the Appellate Court had found that the trial Court has erred in not framing the following issues: -

“1A Whether the plaintiff firm is registered partnership firm and Sh.Vijay Kumar is one of its registered firm and Sh. Vijay Kumar is one of its registered partner and he is competent to institute, sign and verify the plaint? If so its effect? OPP

1B Whether the plaintiff has locus standi to file the present suit? OPP

1C Whether suit filed by plaintiff is not maintainable? OPD”

The appellate Court thus set aside the judgment and decree of the trial Court and remanded the case back to decide it fresh after giving three effective opportunities to the parties to lead evidence on the aforesaid issues.

Aggrieved against the order of the Appellate Court dated 2.8.2011, the present appeal has been filed.

At the outset, both the learned counsel for the parties have submitted that instead of setting aside the judgment and

decree of the trial Court, the order of the Appellate Court may be modified and the issues framed by the Appellate Court may be sent to the trial Court for decision in terms of Order 41 Rule 25 of the CPC.

Since, both the parties are *ad idem* that the judgment and decree of the trial Court be saved and only report may be called on the additional issues framed by the Appellate Court, therefore, order dated 2.8.2011 is hereby modified to the extent that the judgment and decree of the trial Court shall remain intact and the issues No.1A to IC framed by the Appellate Court shall be decided by the trial Court after giving three effective opportunities to both the parties to lead their evidence to prove the issues and then the report on those issues shall be sent by the trial Court within six months to the Appellate Court, who would consider the finding on those issues as well while deciding the appeal.

The parties are directed to appear before the trial Court on 23.2.2015.

Disposed of

29.01.2015

Vivek

(RAKESH KUMAR JAIN)
JUDGE