

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.1406 of 2016 (O&M)
Date of decision:25.02.2016

Didar Singh and another ... Petitioners

Vs.

Manindervir Singh ... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. R.S.Pandher, Advocate
for the petitioners.

AMIT RAWAL J. (Oral)

The petitioner-defendants are aggrieved of the dismissal of the application under Order 14 Rule 5 of the Code of Civil Procedure for framing of the following additional issue at the stage when respondent-plaintiff was leading evidence which read thus:-

“1-A Whether the suit of the plaintiff is barred by the application of Order 2 Rule 2 of the CPC as the plaintiff has intentionally omitted his claim against the defendants in his earlier suit filed vide suit No.40 of 2010 titled as, Manindervir Singh versus Raja Rajinderpal Singh and others' as the plaintiff had not included whole of his claim to which he was entitled in respect of the cause of action? OPD”

Mr. R.S.Pandher, learned counsel appearing on behalf of the petitioner-defendants submits that the proposed issue is essential and necessary for adjudication of the dispute between the parties as the suit is for specific performance of the agreement to sell dated 07.09.2005 and inasmuch as, the plaintiff originally filed a civil suit No.40 of 2010. At that time, he had opportunity to claim the relief as sought, thus, is barred under the provisions of Order 2 Rule 2 of the Code of Civil Procedure. This fact has not been noticed by the Court below, thus, there is illegality and perversity in the impugned order.

I have heard learned counsel for the petitioner-defendants and appraised the paper book and of the view that there is no substance in the aforementioned, submissions/plea. The trial Court, vide order dated 22.04.2015 framed following issues:-

“1. Whether the plaintiff had been ready and willing to perform his part of the agreement to sell dated 07.09.05?

OPP

2. If issue no.1 is proved in the affirmative whether the plaintiff is entitled for the grant of decree for possession by way of specific performance on the basis of above agreement to sell? OPP

3. If issue no.2 has been decided in negative, whether the plaintiff is entitled to alternative relief of recovery as prayed for? OPP

4. *Whether the suit is not maintainable? OPD*
5. *Whether the plaintiff is guilty of concealment of material facts, if so, its effect? OPD*
6. *Whether the suit is bad for mis-joinder and non-joinder of necessary parties? OPD*
7. *Whether the plaintiff has no cause of action and locus standi to file the present suit? OPD*
8. *Relief.”*

Thereafter, framed another issue No.1-B which reads thus:-

“(1B) Whether the agreement to sell dated 07.09.05 is enforceable and not void and non-enforceable in the absence of earlier agreement dated 06.08.05, the existence of which has been concealed by the plaintiff?”

OPP

Issue No.4, in my view, is of wide amplitude which would take care and answer question as sought to be raised by framing additional issue No.1-A.

In view of aforementioned findings, I am of the view that there is no necessity of framing of proposed issue No.1-A noticed above. The petitioner-defendants are at liberty to lead evidence in support of issue No.4, *vis-a-vis* provisions of Order 2 Rule 2 of the Code of Civil Procedure.

With the aforementioned observations, the findings

rendered in impugned order are hereby affirmed and the revision petition stands disposed of.

The trial Court shall take into consideration the objections uninfluenced by this order.

(AMIT RAWAL)
JUDGE

February 25, 2016
savita