

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

**CR No.5766 of 2016
Decided on.06.09.2016.**

Sh. Kimti Lal

.....Petitioner

Versus

Ashok Kumar and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.Rohan Sharma, Advocate
for the petitioner.

DARSHAN SINGH, J. (Oral)

The present revision petition has been preferred against the order dated 16.08.2016 passed by the learned Civil Judge (Jr. Division), Samana, vide which the application moved by the petitioner-plaintiff for framing the additional issues has been dismissed.

2. Plaintiff-petitioner has filed the suit for declaration to the effect that the registered sale deed dated 24.12.1996 executed by respondent-defendant no.1 in favour of respondent-defendant no.2 with respect to the land measuring 14 Kanal 15 Marlas situated in the revenue estate of village Nial, Tehsil Patran, District Patiala and the mutation no. 2191 sanctioned in favour of defendant no.2 are illegal, null and void, without consideration and not binding on the rights of the plaintiff. The same is result of collusion and fraud and are liable to be set aside. He has also sought the relief of possession of the said land

as well as the decree for permanent injunction restraining the defendants from alienating the suit property.

3. The said suit has been contested by the defendants-respondents on the grounds *inter alia* that defendant no.1 being the attorney of the plaintiff has executed the sale deed dated 24.12.1996 in favour of defendant no.2 on behalf of the plaintiff and the mutation was also sanctioned in her favour. The sale consideration to the tune of Rs. 2,21,500/- was handed over to the plaintiff in the presence of Kewal Krishan and Lajpat Rai by defendant no.1.

4. From the pleadings of the parties, the following issues were framed by the learned trial Court vide order dated 14.03.2011:-

1. Whether the plaintiff is entitled to declaration as prayed for? OPP
2. If, so the plaintiff is entitled to possession of suit land as prayed for?OPP
3. If so, whether the plaintiff is entitled to permanent injunction as prayed for?OPP
4. Whether the suit of plaintiff is not maintainable?OPD
5. Relief.

5. During the pendency of the suit, the plaintiff-petitioner moved an application pleading therein that defendants have pleaded the alleged compromise dated 29.02.2000 in the written statement, but no issue has been framed with respect to the said compromise. So, the following additional issue may be framed:-

“Whether the alleged compromise dated 29.02.2000 was executed as alleged by the defendants.?OPD”

The said application was contested by the respondents.

6. After appreciating the contentions raised by learned counsel for the parties, the application moved by petitioner has been dismissed by the learned trial Court vide impugned order dated 16.08.2016. Hence this revision petition.

7. I have heard Mr. Rohan Sharma, Advocate, learned counsel for the petitioner and have meticulously gone through the paper book.

8. Initiating the arguments, learned counsel for the petitioner contended that the additional issue can be framed at any stage of the suit if the same arises from the pleadings of the parties. He contended that in the written statement the respondents-defendants have categorically mentioned about the compromise dated 29.02.2000. The evidence is also being led by the defendants in order to prove that compromise. He contended that when the specific plea has been raised in the written statement by respondents with respect to the compromise dated 29.02.2000, the learned trial Court was required to frame the additional issue as proposed in the application moved by the petitioner and the same has been wrongly dismissed by the learned trial Court.

9. I have duly considered the aforesaid contentions.

10. There is absolutely no dispute with the proposition of law that the additional issue can be framed at any stage of the suit by the Court if the said issue arises from the pleadings of the parties and the same is the matter in issue. In the instant case, the plaintiff-petitioner has challenged the sale deed dated 24.12.1996 executed by defendant no.1 in favour of defendant no.2 with respect to the suit land measuring 14 Kanals 15 Marlas situated in the revenue estate of village Nial, Tehsil Patran, District Patiala and the mutation no. 2191 sanctioned on the basis of the said sale deed in favour of defendant no.2. The learned trial Court has rightly observed in the impugned order that the main issue involved in the suit is with respect to the validity of the said sale

deed and the consequent mutation. The compromise dated 29.02.2000 mentioned in the sale deed is not the matter in dispute. So, there is no need for framing the specific issue with respect to the said compromise.

11. Thus, keeping in view my aforesaid discussion, I do not find any illegality in the impugned order passed by the learned trial Court, which does not call for any interference by this Court.

12. Thus, the present revision petition having no merits, is hereby dismissed.

(DARSHAN SINGH)
JUDGE

06.09.2016

S.khan

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No