

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

**CR No.7604 of 2016(O&M)
Date of Decision:11.11.2016**

***Bansi Ram (deceased) through LRs*Petitioner**

Versus

M/s Aakarshan Estate Pvt. Ltd. and ors.Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Sanjay Verma, Advocate
for the petitioner.

RAJ MOHAN SINGH, J.(Oral)

[1]. Petitioner has assailed order dated 26.10.2016 passed by Civil Judge (Junior Division), Gurgaon vide which application under Order 14 Rule 5 read with Section 151 CPC for framing of additional issues was declined.

[2]. Learned counsel for the petitioner submits that the plaintiff has filed a suit for declaration challenging various documents viz. special power of attorney, general power of attorney, application for licence to DTP and agreement on the ground as stated in para No.7 of the plaint. Issue No.2 was framed to the following effect:-

“2. Whether the impugned agreement dated 15.07.2005 Special Power of Attorney, General Power of Attorney, application of licence, possession letter, undertaking and any other documents prepared by the defendant No.1 on the thumb mark paper regarding the suit land are null and void and result of fraud? OPP”

[3]. Defendant No.1 contested the suit on the strength of preliminary objection No.6 as well as on the basis of sub paras. Defendant relied upon agreement dated 15.07.2005 alleging that the said agreement was executed by the plaintiff along with separate receipts towards acknowledgement of part payment. Replication was filed by the plaintiff denying the execution of alleged agreement dated 15.07.2005 as well as issuance of alleged receipts towards acknowledgement of part payment. Learned counsel further submits that no issue was framed on the basis of aforesaid denial by the plaintiff.

[4]. Issues were framed on 17.01.2013. It is a settled principle of law that onus to prove a relevant fact is always on the party who asserts in affirmative. Issue No.2 covers comprehensive field. The words *“any other documents”* have necessary connotation in the said context. Plaintiff is required to discharge initial onus and thereafter, onus will be shifted upon the defendant to prove his defence. Since the plaintiff has

sought declaration to the effect that the agreement and other documents are illegal, null and void, therefore issue No.2 would suffice to serve the purpose in this context and would cover any other document as well.

[5]. Since issue No.2 has already been framed by the Court which is comprehensive in nature and would cover entire case set up by the plaintiff, therefore in considered opinion of this Court, the trial Court has not committed any error of jurisdiction in declining the prayer under Order 14 Rule 5 read with Section 151 CPC. This revision petition is accordingly dismissed.

11.11.2016

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**(RAJ MOHAN SINGH)
JUDGE**

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No