

Prince Saini
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Chandigarh

dated 08.06.2012. Defendants were directed to execute and register the sale deed in favour of the plaintiffs qua the suit land within two months. Plaintiffs were directed to deposit the balance sale consideration within the aforesaid period.

[4]. Defendants filed an appeal before the Lower Appellate Court. Lower Appellate Court on the issue of title in favour of defendants No.1 and 2 recorded findings that in the written statement filed by the defendants, a plea was taken that they were neither the owners, nor were in possession of the suit land, therefore, they were not competent to execute any agreement to sell. It was further pleaded that the father of the defendants namely Inder Singh during his lifetime bequeathed his estate in favour of his sons and grand-sons qua which mutation No.1225 had already been sanctioned.

[5]. In view of aforesaid variance in the pleadings of the defendants, Lower Appellate Court thought it appropriate to frame additional issues in respect of ownership and exclusive possession of defendants No.1 and 2 and factum of entering into agreement to sell by the defendants with the plaintiffs on 31.08.2005.

[6]. During course of arguments, it transpires that the defendants intended to withdraw part of the earlier written

statement in respect of admission made by the defendants qua Will being result of fraud committed by their brother and the plaintiffs. The said application was declined by the trial Court. However, a Civil Revision is pending in the High Court.

[7]. Since issue No.1 has been framed by the Lower Appellate Court in respect of title of defendants No.1 and 2 viz-a-viz the suit property, the stand taken by the defendants in the written statement in respect of will in favour of their brother and nephew and thereafter, changed version in the form of proposed amendment, thereby alleging fraud against the petitioners would definitely require participation of the petitioners in the proceedings to be a necessary and proper parties. Issue No.1 would require their participation in respect of title of the property for which a categoric stand was initially taken by the defendants and now the proposed amendment would also make the applicant/petitioners to be necessary party as no finding regarding fraud can be recorded against the petitioners in their absence. The nature of suit in view of framing of additional issues would remain the same. Only findings will be recorded by the Courts in furtherance of the remand order for which, both the parties would be entitled to lead evidence. The nature of suit in any case, will not be changed in the view of the fact that necessary findings are required for the purpose of answering

the claim of the petitioners for specific performance on the basis of agreement to sell.

[8]. In view of above, I deem it appropriate to accept this revision petition. Impugned order dated 06.01.2016 passed by Additional Civil Judge (Sr. Division), Tarn Taran is hereby set aside. Necessary consequences to follow. Trial Court shall make every endeavour to decide the main suit at the earliest.

September 5, 2017.

(RAJ MOHAN SINGH)
JUDGE

Prince

Whether speaking/reasoned Yes/No

Whether reportable Yes/No