

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.1684-2017

Date of decision: March 08, 2017

KUNDAN LAL

....PETITIONER...

VS.

RAKESH KUMAR AND OTHERS

....RESPONDENTS...

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Amit Jain, Advocate,
for the petitioner.

JASPAL SINGH, J.

Challenge in this revision petition is to the order dated 23.01.2017 (Annexure P-9) passed by Additional Civil Judge (Senior Division) Pataudi whereby an application moved under Order XIV Rule 5 read with Rules 1 and 4 and Section 151 of the Code of Civil Procedure for framing of additional issues, has been dismissed.

2. The contention of learned counsel for petitioner-defendant No.7 is that petitioner-defendant No.7 has taken a specific defence in his written statement that sale deed bearing Vasika No.1885, dated 12.02.2009 is a result of fraud, undue influence, misrepresentation and without consideration. But despite the fact that a specific plea was taken in this regard, no issue has been framed by the ld. trial court. The trial court has wrongly declined the prayer for framing of additional issue with regard to the aforesaid sale deed, holding that there is no necessity to frame such an issue, as the aforesaid sale deed is a

subject matter of another suit filed by petitioner-defendant No.7 seeking declaration with consequential relief of permanent injunction against the present respondent-plaintiff.

3. Learned counsel for the petitioner further contends that until and unless, specific issue is not framed in view of the specific plea taken by petitioner-defendant No.7, no finding can be recorded qua it. Thus, the impugned order is not sustainable in the eyes of law and is liable to be set aside. Consequently, application for framing of additional issues deserves to be allowed.

4. This Court has given a thoughtful consideration to the aforesaid submissions made by learned counsel for the petitioner but find the same to be of no legal weight,

5. In fact, respondent-plaintiff has filed a simple suit seeking relief of permanent injunction against petitioner-defendant No.7 and others claiming himself to be owner in possession of the suit property on the basis of sale deed bearing vasika No.1885, dated 12.02.2009. Since, suit filed by the respondent-plaintiff is a simple suit for permanent injunction, the ownership is not going to be decided. Similarly, legality or illegality and validity or invalidity are also not going to be decided in a suit for permanent injunction. As such, there is no requirement of framing of any additional issue with regard to the legality and validity of sale deed bearing vasika No.1855, dated 12.09.2009. Otherwise also, petitioner-defendant No.7 has already filed a suit for declaration and consequential relief of permanent injunction against respondent-plaintiff whereby he has challenged the above referred sale deed. Both the cases are being taken up by the court concerned simultaneously. Since, sale deed No.

1855, dated 12.02.2009 is not a matter in issue in the suit for permanent injunction, this Court is of the considered view that trial court has rightly declined the application for framing of additional issues in this regard. The impugned order dated 23.01.2017 does not suffer from any illegality, infirmity or perversity, so, as to cause any interference by this Court.

6. Thus, finding the instant petition to be devoid of merits, the same is dismissed.

7. No order as to costs.

March 08, 2017
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(JASPAL SINGH)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No