

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

Civil Revision No.8232 of 2017

Date of Decision: 24.11.2017

Hardeep Singh

. . . Petitioner

Versus

Rajbir Kaur and others

. . . Respondents

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Bikramjit Singh Bajwa, Advocate
for the petitioner.

Rajbir Sehrawat, J. (Oral)

Present petition has been filed challenging the order dated 08.11.2017 (Annexure P-6), passed by the Additional Civil Judge (Senior Division), Batala, whereby the application filed by the applicants/petitioners under order 14 Rule 5 CPC for framing additional issue as to whether the applicants/petitioners were the *bona fide* purchaser or not, has been declined by the Courts below.

Brief facts of this case are that Sarabjit Kaur, had filed a suit for declaration to the effect that the plaintiff and defendants are owners in possession in equal share of the land measuring 57 kanals 19 marlas bearing *khasra* number as mentioned in the head note of the plaint. However, Sarabjit Kaur lost her interest and Rajbir Kaur was transformed as plaintiff. In the proceedings of the suit, the original Will dated

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16.02.1999; allegedly executed by Diwan Singh in favour of defendant Nos.1 to 5, has not been produced. The suit was ultimately decreed since the defendant Nos.1 to 5 have not produced the original sale deed. Therefore, the defendant Nos.1 to 5 filed the appeal before the Lower Appellate Court. However, before filing of the suit, the present petitioner had purchased the land from defendant Nos.1 to 5, through registered sale deed. During the pendency of the appeal, the present petitioner moved an application under Order 22 Rule 10 CPC for impleading him to be the defendants. Finding force in the arguments, the Appellate Court allowed his application. Therefore, the judgment and decree was set aside by the lower Appellate Court. The matter was remanded to the trial Court for fresh decision; after giving two opportunities to the present petitioner to lead evidence and substantiate his plea; that he is *bona fide* purchaser of the suit property. Thereafter, in the suit, the present petitioner moved an application for framing of the additional issues as mentioned above; regarding the present petitioner being *bona fide* purchasers of the suit property. However, that application has been rejected by the trial Court merely on the ground that lower Appellate Court had remanded the suit with a specific order that only two opportunities were to be granted to the present petitioner to lead the evidence and that there was no specific order to frame issue as to the status of the petitioner being the *bona fide* purchaser. The trial Court has recorded that permitting the additional issue to be framed means starting the trial *denovo*. Therefore, the application of the present petitioner has been dismissed.

Arguing counsel for the petitioner submits that, although the Appellate Court remanded the case with the direction that the petitioner shall be granted only two opportunities to complete his evidence. however, the lower Appellate Court never ordered that the petitioner will not be permitted to get issue framed as to their status as *bona fide* purchaser. It is the submission of the learned counsel for the petitioner that despite framing of the issue, as claimed by the petitioner, he can conclude the evidence in two opportunities; as directed by the lower Appellate Court. Therefore, there is no inconsistency in these two aspects and hence additional issues are to be framed by the trial Court.

The counsel further submits that unless the 'issue of fact' is framed by the trial Court, the petitioner would not be able to lead to exact evidence, which may be required for the controversy; since any evidence lead by the plaintiffs could be interpreted in any manner. Hence, it is submitted by learned counsel for the petitioner that a specific issue is required to be framed to clarify as to what is to be proved by the present petitioner; so that he can lead his evidence.

Having considered the submissions of learned counsel for the petitioner, this Court finds substance in the arguments. Although the lower Appellate Court has remanded the case to trial Court with the direction to grant two effective opportunities to the petitioner, however, the same can also be availed by the petitioner after getting the issue on the point of his status as *bona fide* purchaser framed, so that no party to the litigation remains under any confusion. Otherwise also once the petitioner is party to the proceedings, in his own right, he has right to

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get issues framed to substantiate his claim. Hence, the trial Court is not right in dismissing the application moved by the petitioner for framing of the additional issues. Hence, the order passed by the trial Court is set aside.

The trial Court shall now frame issue on the point of status of the present petitioner as *bona fide* purchaser as claimed by him and thereafter, the trial Court shall grant two opportunities to the present petitioner to complete his evidence on the issues.

In view of the above, present petition is allowed in the abovesaid terms.

[RAJBIR SEHRAWAT]
JUDGE

November 24, 2017.

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Whether Speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No