

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.4370 of 2017(O&M)
Date of Decision-27.11.2018

Labh Singh ... Petitioner
Versus

Pal Singh and others ... Respondents

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

Present: Mr. Parvinder Singh, Advocate
for the petitioner.

Mr. Harsh Chopra, Advocate and
Mr. H.S. Bhullar, Advocate
for respondents No.1, 2, 3, 4 and 6.

RAJ MOHAN SINGH, J.

[1]. Petitioner/defendant No.3 has preferred this revision petition against the order dated 24.04.2017 passed by Civil Judge (Senior Division), S.A.S. Nagar Mohali, whereby the application filed by the petitioner for framing of additional issues was dismissed.

[2]. Few facts of the case are relevant to be noticed. Plaintiff/respondent No.1 filed a suit for possession by way of specific performance of agreement to sell dated 04.04.2014 executed by Matu Singh in favour of the plaintiff in respect of land measuring 19 kanals 12 marlas as detailed in the plaint. The suit was filed with the averments that Matu Singh had disclosed to the plaintiff that he had taken loan from some persons of the village for which one Gurdeep Singh had obtained his signatures on

some blank stamp papers and has forged agreement to sell. A suit for specific performance was filed on the basis of said agreement in the Civil Court against Matu Singh. Matu Singh told that he wanted to effect a compromise with the said persons and he proposed to sell his property in favour of the plaintiff. Plaintiff being close relative of deceased Matu Singh had agreed to his proposal. Plaintiff had given an amount of Rs.19.50 lacs vide demand draft No.367294 in the Court on behalf of Matu Singh and the said suit was compromised.

[3]. Matu Singh had further disclosed to the plaintiff that he had also taken a loan from some other persons and had mortgaged part of his property and in order to redeem the said property, Matu Singh again approached the plaintiff and asked that he intended to get his loan cleared. Matu Singh approached the plaintiff and agreed to sell his land in favour of the plaintiff for which the plaintiff agreed and entered into an agreement to sell dated 04.04.2014 for the land measuring 19 kanals 12 marlas as detailed in the plaint @ Rs.31,25,000/- per acre. Plaintiff had paid an amount of Rs.26 lacs on 04.04.2014 i.e. Rs.19.50 lacs paid through demand draft and Rs.6.50 lacs in cash to Matu Singh. According to agreement to sell dated 04.04.2014, the plaintiff had to pay Rs.38 lacs to Matu Singh on or before 30.11.2014 and the sale deed was to be executed upto 08.06.2015. Matu Singh again received an amount of Rs.20 lacs on 12.11.2014 in the presence of the witnesses and an endorsement to that effect was made at

the back of the agreement in the form of receipt. Another amount of Rs.18 lacs was paid to Matu Singh on 26.11.2014 in the presence of the witnesses and in token of its receipt, Matu Singh made an endorsement at the back of the agreement. In this way, Matu Singh (since deceased) had received an amount of Rs.64 lacs from the plaintiff as earnest money. Since Matu Singh died on 09.01.2015, the defendants being legal heirs of deceased Matu Singh had inherited the estate of deceased Matu Singh, therefore, the suit was filed against the defendants being legal heirs of Matu Singh.

[4]. As per memorandum of the parties, Pal Singh/respondent No.1 is the plaintiff. Avtar Singh, Harchand Singh and Labh Singh are the sons of deceased Matu Singh. Mukhtiar Kaur is widow of Matu Singh, whereas Balwinder Kaur and Manjit Kaur are daughters of Matu Singh. Only defendant No.3 has come forward to file the present revision petition.

[5]. The suit was contested by defendant No.3/petitioner by filing his written statement. In the written statement, defendant No.3/petitioner took the stand that Matu Singh never taken any loan from any person as alleged by the plaintiff. Late Matu Singh never entered into an agreement to sell with the plaintiff on 04.04.2014 as alleged by the plaintiff. Plaintiff never paid any amount to Matu Singh as alleged. The rate of land was never settled @ Rs.31,25,000/- per acre. The agreement was claimed

to be forged and fabricated as no consideration was passed on the basis of alleged agreement to sell. Defendant No.3/petitioner also claimed that market value of the land was Rs.60 lacs per acre in the year 2014. An oral family settlement took place in the month of October, 1995 between the answering defendant No.3, Matu Singh and defendants No.1 and 2 in which defendant No.3 was given about 3 acres of land and $1/3^{\text{rd}}$ share in khasra No.83 min (1-4) and possession was also delivered to him. Since then, defendant No.3 claimed himself to be owner in possession of the land. He had installed tubewell about 15 years ago after incurring huge amount. Now, defendant No.3 has given the land on batai for the last about 4-5 years. At present, Kuljit Singh is cultivating the land on batai. Defendant No.3/petitioner also claimed the property to be ancestral and coparcenary property. Deceased Matu Singh never consulted with defendant No.3 at the time of alleged agreement to sell and the same is claimed to be not binding upon defendant No.3. In pith and substance, defendant No.3 contested the suit on every aspect.

[6]. Replication was filed by the plaintiff to the written statement filed by defendant No.3/petitioner thereby reiterating the stand taken in the plaint.

[7]. Both the parties went to trial on the following issues:-

“(1) Whether the plaintiff is entitled for possession by way of specific performance as prayed for? OPP

(2) Whether Matu Singh executed agreement to sell dated 04.04.2014 in favour of the plaintiff? OPP

(3) Whether the plaintiff is entitled to the relief of permanent injunction as prayed for? OPP

(4) Whether the suit is not maintainable in the present form? OPD

(5) Whether the plaintiff has not come to the Court with clean hands? OPD

(6) Relief.”

[8]. Thereafter, an application was filed by defendant No.3/petitioner for framing of following additional issues:-

“(a) Whether a family settlement was arrived between defendant No.1 to 3 and late Sh. Matu in the month of October 1995 regarding the suit property? OPD

(b) Whether the suit property is ancestral and coparcenary property qua the defendant No.1 to 6 and late Sh. Matu? OPD”

[9]. The said application was contested by the plaintiff.

[10]. Additional Civil Judge (Senior Division), Mohali vide order dated 24.04.2017 dismissed the application primarily on the ground that defendants being class I heirs of Matu Singh are legally bound by the act of Matu Singh during his lifetime. No question of family settlement or the status of the property can be raised by the defendants being legal heirs of Matu Singh because the defendants being the legal heirs of Matu Singh are bound by the act of Matu Singh. Further in a suit for specific performance,

there is no necessity to give any finding regarding family settlement of the defendants (if any) and further the status of the property is also not to be gone into. On the aforesaid premise, the impugned order was passed by the trial Court.

[11]. Notice of motion was issued on 07.07.2017. Thereafter, as per order dated 27.02.2018, none appeared on behalf of respondents No.1 to 4 despite service. They were proceeded against *ex parte*. Respondents No.5 and 6 were found residing in their in-laws family. Fresh addresses were required for their services. On the next date i.e. 03.08.2018, Mr. H.S. Bhullar, Advocate for Mr. Harsh Chopra, Advocate appeared on behalf of respondents No.1, 2, 3, 4 and 6 and sought time to address arguments. The case was adjourned to 15.11.2018 for arguments. The suit was filed by respondent No.1. Defendant No.3/petitioner is the only contesting party in the suit. Other LRs of Matu Singh have not filed their written statement, therefore, respondent No.1 being plaintiff is the only contesting party for the purpose of present revision petition who has been duly represented by Mr. Harsh Chopra, Advocate.

[12]. Learned counsel for the petitioner/defendant No.3 relied upon cross examination of the plaintiff wherein he has admitted that Matu Singh was father-in-law of his daughter and he pleaded ignorance about any family settlement between defendants No.1 to 3 and late Matu Singh in the month of

October, 1995. He also pleaded ignorance about 3 acres of land out of the suit property was given to the petitioner/defendant No.3 by Matu Singh. Plaintiff has admitted that some part of the land is ancestral and some part of the land is inherited by him through Will.

[13]. Learned counsel relied upon **Chebrol Sriramalu Vs. Vakalapudi Satyanarayana, 2014(2) CivCC 66, Jagjit Singh Vs. Mithoo Singh, 1998 (3) RCR (Civil) 48, Anil Kumar and others Vs. Ranbir Singh, 1988(2) PLR 510 and Gursharan Singh Vs. Saravjot Singh and others, 2016(5) RCR (Civil) 290**

and contended that in a suit for specific performance, if objection is taken in respect of joint family property by the defendants, then the said issue becomes relevant and significant for effective disposal of the suit. On the death of original vendor after filing of the suit, if legal representatives are impleaded, then they cannot take plea that the original vendor was not competent to alienate the ancestral property. They can only challenge the sale deed after its execution on the ground of legal necessity as the Karta cannot be restrained from selling the property, but if the LRs are impleaded as party in the suit under Order 1 Rule 10 CPC or they have been impleaded as party defendants by the plaintiff after the death of vendor before filing of the suit, then the legal representatives of the vendor can take such defence in their own capacity and they cannot be left to challenge the sale deed after its execution in a suit for specific performance. Such defendants

cannot be first forced to execute a sale deed and then challenge the same themselves on that ground. A distinction has to be drawn at this juncture that Karta of the joint Hindu family cannot be restrained by other coparceners to sell the land, however, if the death of such Karta took place before filing of the suit and the coparceners are impleaded in their personal capacity in the suit, then such coparceners/defendants cannot be forced to execute the sale deed at one point of time and then challenge the same themselves on that very ground at a subsequent stage. The ratio laid down in **Jaqjit Singh's case (supra)** can be relied in the aforesaid context. In a case of specific performance in respect of coparcenary property, contract of sale if not in the interest of the family cannot be enforced.

[14]. On the other hand, learned counsel for the respondents submitted that additional issues cannot be framed as the same would be beyond the scope of consideration in a suit for specific performance. Learned counsel relied upon **P.D'Souza Vs. Shondrilo Naidu, (SC) 2004(3) RCR (Civil) 668** and contended that it is indisputable that in a suit for specific performance of contract the plaintiff must establish his readiness and willingness to perform his part of contract. The question as to whether the onus was discharged by the plaintiff or not, will depend upon the fact and circumstance of each case. Learned counsel further submitted that as per cross-examination of the plaintiff as relied by defendant No.3/petitioner, there was no

admission in respect of ancestral property. The statement as a whole has to be read. Plaintiff has not admitted any suggestion in respect of alleged family settlement. The cross-examination cannot be read in isolation, rather it has to be read in its entirety. Learned counsel also submitted that the ingredients of Order 14 CPC are not attracted to the facts and circumstances of the case. Learned counsel referred to **Chand Bee (died) by LR and others Vs. Hameedunnissa and others, 2007(5) RCR (Civil) 560** and contended that the additional issue can only be framed on the controversy perceived between the parties and if the framing of issue enable the parties to direct their resources to it, in the form of oral and documentary evidence which would enable the Court to decide the controversy in an effective manner.

[15]. Perusal of the issues already framed and additional issues sought to be framed would show that the same are in consonance with the basic controversy involved in the present case in the light of stand taken by defendant No.3 in the written statement. Defendant No.3 has not been impleaded as legal representatives after the death of his father/original vendor, rather original suit has been filed against defendant No.3. A distinction has to be drawn in terms of Order 22 Rule 4 CPC and Order 1 Rule 10 CPC. If defendant No.3 is impleaded with the aid of Order 22 Rule 4 CPC after the death of original vendor, then possibly he cannot go beyond the stand taken by the original vendor, but if he has been impleaded with the aid of Order 1 Rule

10 CPC, then he would be in his individual capacity to take his own stand in the written statement. The stand taken by defendant No.3/petitioner in the written statement would be in consonance with the additional issues and the framing of those issues would be relevant for real determination of the controversy between them.

[16]. For the reasons recorded hereinabove, this revision petition is allowed. Impugned order dated 24.04.2017 passed by Civil Judge (Senior Division), S.A.S. Nagar Mohali is hereby set aside. Additional issues as pointed out by defendant No.3/petitioner shall be framed by the trial Court and thereafter, trial Court shall proceed to decide the suit on merits in accordance with law.

(RAJ MOHAN SINGH)
JUDGE

27.11.2018

Prince

Whether Reasoned/Speaking

Yes/No

Whether Reportable

Yes/No