

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

C.R. No.516 of 2017

Date of Decision.23.05.2018

Mangat Ram and another

...Petitioners

Vs

Sandesh Kumari and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Satbir Rathore, Advocate
for the petitioners.

Mr. Sunil Agnihotri, Advocate
for the respondents.

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AMIT RAWAL J.(ORAL)

The present revision petition is directed against the order dated 19.12.2016 whereby the trial Court framed the additional issue No.5-A regarding maintainability of the suit.

Mr. Satbir Rathore, learned counsel appearing on behalf of the petitioners-plaintiffs submitted that plaintiffs instituted the suit for possession of the house shown in red colour in the site plan and constructed within the area of about 8 marlas forming part of total land measuring 2 kanals 11 marlas (hereinafter called the “suit property”). The aforementioned suit was dismissed by the trial Court vide judgment and decree dated 23.08.2011 and the appeal bearing No.64 of 2011 was preferred but the lower Appellate Court holding the suit to be maintainable remitted the matter to the trial Court to decide the suit afresh after getting the property demarcated from the revenue officials in accordance with law. However, the respondents-defendants submitted an application (Annexure P-5) under Order 14 Rule 5 CPC for framing the additional issue of maintainability which

was objected to but the trial Court erroneously allowed the same. In this regard, he drew attention of this Court to the finding of the lower Appellate Court whereby the objection of the defendants with regard to the maintainability of suit on the premise that similar suit had been filed earlier was over-ruled, in essence, it was held that the suit was maintainable. Therefore, there was no occasion for the trial Court to frame the aforementioned additional issue, thus, urges this Court for setting aside the order under challenge.

Mr. Sunil Agnihotri, learned counsel appearing on behalf of the respondents-defendants submitted that once the Court had ordered for *de novo* trial, the Court was well within the jurisdiction to frame the issue. The parties are given liberty to lead evidence for the purpose of adjudication of dispute qua suit property after a fresh demarcation. Demarcation has already been conducted, therefore, there was no harm and prejudice would be caused to the petitioners, thus, urges this Court for dismissal of the revision petition.

I have heard learned counsel for the parties and appraised the paper book. It would be apt to reproduce the finding of the lower Appellate Court as well as Issue No.5-A, which are as under:-

“.....Even in compromise Ex.D1 it is admitted that plaintiff is owner of Khasra No.274 and in case any encroachment is found in khasra number 274, then plaintiffs will be compensated for the same or will be given land in lieu of that by defendants. In the present case, the dispute is only regarding demarcation and plaintiff was well within his right to file another suit for

possession as earlier suit was not decided on merits. It is his categoric case that defendants did not get the land demarcated and did not abide by conditions of compromise. Though learned counsel for the respondents vehemently argued that another suit for possession is not maintainable and only suit for enforcement of agreement should have been filed but said argument is totally devoid of any merit. The learned counsel has relied upon judgment in case titled as Shri Ravi Aggarwal versus Shri Anil Jagota E.F.A. (OS) No.19 of 2009 decided on 18.05.2009 but the same is not at all applicable. In that case controversy was that as to whether settlement arrived at between the parties could be enforced in execution proceedings or not and the Hon'ble High Court held that execution petition was not maintainable.

Additional issue

5A. Whether the present suit is not maintainable as per compromise Ex.C-1 dated 5.12.1999? OPD”

On simple and plain reading of the aforementioned observations of the lower Appellate Court, the trial Court ought not to have entertained the application of the respondents-defendants for framing the additional issue No.5-A as extracted above, for, the aforementioned objection of the defendants had already been rejected by the lower Appellate Court, thus, in my view the order under challenge is not sustainable in the eyes of law and is hereby set aside

as suffering from illegality and perversity.

The revision petition is allowed.

(AMIT RAWAL)
JUDGE

May 23, 2018
Pankaj*

Whether reasoned/speaking	Yes
Whether reportable	No