

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.8330 of 2017(O&M)
Date of Decision-25.09.2018

Surjeet Singh ... Petitioner
Versus
Sham Lal Thukral and another ... Respondents

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

Present: Mr. Arun Bansal, Advocate
for the petitioner.

Mr. R.K. Singla, Advocate
for respondent No.1.

Mr. Inderjeet Sharma, Advocate
for respondent No.2.

RAJ MOHAN SINGH, J.

[1]. Plaintiff/petitioner has assailed the order dated 07.11.2017 passed by Additional Civil Judge (Senior Division), Bathinda, vide which the application filed by the plaintiff under Order 14 Rule 5 read with Section 151 CPC for recasting of issue No.6-A was dismissed.

[2]. Plaintiff filed a suit for specific performance of agreement to sell dated 10.05.2008, in alternative for realization of the amount of Rs.20 lacs and for permanent injunction against the defendant.

[3]. Issues were framed on 25.05.2010. Thereafter, an application under Order 1 Rule 10 CPC was filed for impleading Seema Rani wife of Ramesh Kumar Galhotra as defendant No.2

as she had purchased the suit land from defendant No.1 during pendency of the suit. Seema Rani was allowed to be impleaded as defendant No.2. Therefore, amended plaint was allowed to be filed. Written statement was filed by defendant No.2 Seema Rani.

[4]. Additional Civil Judge (Senior Division), Bathinda vide order dated 05.01.2016 framed issues No.6-A and 6-B to the following effect:-

“6-A Whether defendant No.1 has illegally transferred the suit property in favour of defendant No.2 namely Sima Rani? OPP

6-B Whether defendant No.2 is bona fide purchaser for consideration? OPD”

[5]. An application under Order 14 Rule 5 read with Section 151 CPC for recasting of issue No.6-A was filed by the plaintiff/petitioner on the ground that the onus to prove a relevant fact is always on the party who asserts in affirmative. The issue cannot be in negative. The onus in negative cannot be discharged. Issue No.6-A was sought to be reframed/recasted to shift the onus of the same upon the defendants and the issue on being recasted should be reframed as under:-

“Whether the transfer of property in question by defendant No.1 in favour of defendant No.2 Seema Rani is legal and valid? OPD”

The recasting of aforesaid issue No.6-A is claimed to be material for fair adjudication of the case.

[6]. The prayer was opposed by the defendants.

[7]. Additional Civil Judge (Senior Division), Bathinda vide order dated 07.11.2017 has dismissed the application on the ground that the plaintiff could have pressed for framing of proposed issue at the time of recasting of the issue itself and filing of the application amounts to filling lacuna.

[8]. Perusal of the impugned order would show that the trial Court has relied upon **Surinder Singh Vs. Kuldeep Singh and others, 2015(3), PLR 846**. The said judgment was in respect of framing of additional issues. In the instant case, additional issues No.6-A and 6-B have already been framed. Perusal of additional issue No.6-B would show that there is no illegality in placing the onus on defendant No.2 in respect of proving her *bona fide* for purchasing the property during pendency of the suit for consideration. The onus was rightly fastened upon defendant No.2, whereas issue No.6-A has been framed in negative overtone, whereby the plaintiff has been asked to discharge the onus to show that defendant No.1 has illegally transferred the suit property in favour of defendant No.2.

[9]. Section 101 of the Evidence Act mandates that whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. It means that burden of proof is always on the party who asserts in affirmative. The issue has to

be in affirmative. Defendant No.2 has purchased the property during pendency of the suit from defendant No.1, therefore, burden would lie on defendant No.2 to prove the transaction of purchase from defendant No.1 on lawful criteria and in this manner, defendant No.1 would be obligated to show that the transfer of property made by him in favour of defendant No.2 is legal and valid. The burden of proof of issues No.6-A and 6-B ought to have been on the defendants as nature of transaction during pendency of the suit is claimed to be *bona fide* by the defendants. Burden of proof lies on that party who would fail, if no evidence at all is given on either side.

[10]. Since the transfer of the land in question has taken place during pendency of the suit, therefore, owing to the conduct of defendant No.1, the burden has to be fastened upon defendant No.1 to prove that the transfer of property during pendency of the suit has taken place on lawful parameters and the issue ought to have been recasted and burden ought to have been placed on the defendants as the same is a subsequent event during pendency of the suit.

[11]. After due consideration of the facts and circumstances of the case, I am of the view that issue No.6-A has to be reframed by way of recasting the same, thereby obligating the defendants to prove legality and validity of the sale deed executed by defendant No.1 in favour of defendant No.2. Keeping in view the

stage of the suit, it would be just and appropriate not to allow the plaintiff to lead any evidence on the issue after recasting of the same as the plaintiff has already concluded his evidence. Defendants would be at liberty to lead evidence on the issue after recasting of the same in accordance with law.

[12]. Disposed of.

(RAJ MOHAN SINGH)
JUDGE

25.09.2018

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Whether Reasoned/Speaking	Yes/No
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Whether Reportable	Yes/No
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