

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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RSA No.2469 of 2017 (O&M)
Date of decision: 28.02.2018

Swaran Singh and others

..... Appellants

Versus

Daljit Kaur

..... Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Fateh Saini, Advocate for the appellants.

Mr. Tejpal Singh Dhull, Advocate for the respondent.

ANIL KSHETARPAL, J. (ORAL)

Defendants-appellants are in regular second appeal against the judgment passed by learned First Appellate Court reversing the judgment passed by the learned trial Court.

Plaintiff had filed a suit with the following three prayers:-

1. Permanent injunction restraining the defendants from constructing, selling, mortgaging or transferring in any manner 20 marlas of land described in the plaint.
2. For removal of every construction made on the land fallen to the share of Ranjit Singh, her husband.
3. For handing over separate possession of the same to Ranjit Singh.

The suit was contested by defendants No.1, 2 and 4. The defendants pleaded that the sale deed executed by defendant No.4 in favour of defendant No.1 is not with respect to the suit property. However, unfortunately the learned trial Court without looking at the pleadings of the

parties framed the issues which are extracted as under:-

- “1. Whether the plaintiff is entitled to decree for permanent injunction as prayed for?OPP*
- 2. Whether the plaintiff has no locus standi to file the present suit? OPD*
- 3. Whether the suit of the plaintiff is not maintainable in the present form?OPD*
- 4. Relief.”*

It is clear that the issues framed by the Court were not in accordance with Order 14 of the Code of Civil Procedure. Order 14 of the Code of Civil Procedure provides that each material proposition affirmed by one party and denied by other shall form the subject matter of a distinct issue. The issues are not to be framed on the basis of prayer made in the suit. In this case, learned trial Court committed this fundamental error while framing the issues. Neither the trial Court framed an issue as to whether the property sold by defendant No.4 in favour of defendant No.1 is part of the suit land nor the trial Court framed the issue to determine as to what was the share of the husband of the plaintiff who is stated to have settled outside the country. A reading of the judgment passed by the learned First Appellate Court shows that the Court treated the suit to be only for permanent injunction. A careful reading of the prayer made in the suit establishes it otherwise. Prayer made in the suit is extracted as under:-

“It is therefore, prayed that a decree for permanent injunction restraining the defendants from constructing, selling, mortgaging or transferring in any manner 20 marlas of land except their share situated in Khewat/khatauni No.337(328)/400, Khasra No.73 (0-5), 74 (0-5), and in Khewat/khatauni No.171(165)/206, in Khasra No.72//2 (0-10), situated in village Korwa Kalan, H.B. No.279, tehsil Naraingarh, distt. Ambala and for removal of every construction made on the land of the share of Ranjit Singh and for handing over the separate possession of the same to

Ranjit Singh, through the plaintiff, alongwith any other relief which this Ld. Court deems fit, may kindly be passed in favour of the plaintiff against the defendants with costs of the suit.”

Learned First Appellate Court has accepted the appeal even without recording any finding as to whether the property which was subject matter of sale by defendant No.4 in favour of defendant No.1 is part of the suit land as described in the plaint or not.

This Court has repeatedly requested the learned trial Courts to apply their judicial mind while framing the issues. Framing of issues is an important step which determines the points which arise between the parties for adjudication. While framing the issues, the Court also places onus to prove various issues on the parties to the suit. After framing of issues, the parties come to know as to what is required to be proved by each of them. The casual approach of the Courts in framing the issues is deprecated.

In view of the discussion made above, this Court finds that the judgments of both the Courts below have not even chosen to address the real issue involved in the case and adjudicate upon the same.

In these circumstances, judgments of both the Courts below are set aside and the case be remanded back to the learned trial Court.

Learned trial Court is requested to examine the pleadings of the parties carefully and thereafter, frame appropriate issues in accordance with Order 14 of the Code of Civil Procedure and grant opportunity to the parties to lead evidence.

With these observations, the regular second appeal is allowed.

(ANIL KSHETARPAL)
JUDGE

28.02.2018
Dinesh Bansal

Whether speaking/reasoned
Whether Reportable

Yes / No
Yes / No