

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

RSA No. 302 of 2018(O&M)

Date of decision: 16.1.2018

Krishan Inder Sarup

....Appellant

VERSUS

Sukhwinder Singh and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. N.S. Kandhola, Advocate for the appellant.

REKHA MITTAL, J.

The present Regular Second Appeal directs challenge against consistent findings recorded by the Courts below whereby suit filed by respondent No.1/plaintiff for possession by way of specific performance of agreement of sale dated 17.06.2008 has been decreed.

A brief backdrop of the case is that respondent No.1/plaintiff filed the suit on the premise that Manjot Singh – respondent No.2 executed agreement to sell dated 17.06.2008 for sale of suit land at the rate of Rs.13,00,000/- per acre and received a sum of Rs.5,00,000/- as earnest money. The sale deed was agreed to be executed on or before 17.12.2008 after payment of balance sale consideration by the plaintiff. The plaintiff always remained ready and willing to perform his part of the agreement but the proposed vendor failed to come true to his commitment. Earlier, the plaintiff filed an injunction suit on 01.08.2008 in which interim stay was granted. After expiry of stipulated date for execution of the sale deed, the previous suit was withdrawn and the instant suit was filed. The plaintiff

also challenged the agreement to sell dated 05.07.2006 executed by defendant No.1 in connivance with Krishan Inder Sarup (appellant herein) being forged and fabricated, judgment and decree passed on the basis of agreement dated 05.07.2006 and the sale deed dated 20.05.2010 executed on the basis of judgment and decree passed in the suit filed by the present appellant.

The trial Court framed issues, permitted the parties to adduce evidence in support of their respective contentions and eventually the suit filed by respondent/plaintiff was decreed with a direction to the plaintiff to pay balance sale consideration to Manjot Singh within a period of one month and Manjot Singh to execute and register the sale deed in respect of 21 bigha 15 biswa 10 biswansi on receipt of balance sale consideration within one month and Krishan Inder Sarup was directed to join Manjot Singh in execution of sale deed qua land in question.

Feeling aggrieved against the judgment and decree passed by the trial Court, two separate appeals were preferred by Manjot Singh and Krishan Inder Sarup and both the appeals were decided by a common judgment dated 03.10.2017 whereby the judgment and decree passed by the trial Court were affirmed.

Still feeling dis-satisfied, the present appeal has been preferred by Krishan Inder Sarup.

The sole submission made by counsel for the appellant is that as the trial Court did not frame a specific issue, if agreement of sale dated 05.07.2006 executed by Manjot Singh in favour of the appellant is forged and fabricated as averred by the respondent/plaintiff, the appellant is deprived of his valuable right to prove the said agreement in accordance with law, therefore, the judgments and decrees passed by the Courts below

cannot be allowed to sustain and liable to be set aside with a direction to the trial Court to decide the suit afresh after framing a specific issue in the aforesaid regard.

I have heard counsel for the appellant, perused the paper-book particularly the judgments passed by the Courts below.

Perusal of the judgment passed by the Court in appeal would reveal that this legal issue was raised by the appellant before the said Court as well and the same was answered against the appellant in view of observations recorded in para 18 of the judgment. A relevant extract therefrom, reads as follows:-

18. The second legal issue raised before this Court by the learned counsel for the appellants would be that the learned trial Court has set aside agreement of sale in favour of Krishan Inder Sarup Ex.D3 on the ground that it was collusive and result of fraud, but no such specific issue regarding validity of such agreement was framed and, therefore, the defendants have been prejudiced because of non framing of that material issue without which no such finding could be recorded. I have considered this submission of learned counsel for the appellants, but here again I do not find force in it. It is now well settled that when the parties are aware of the pleadings right from the beginning and they led evidence in support of those pleadings in affirmative and in rebuttal to those pleadings then non framing of issue does not in any manner vitiate the trial. In the present case, the pleadings from the side of the plaintiff are very specific right from the very beginning that such agreement of sale, shown to have been executed by defendant Manjot Singh in favour of appellant Krishan Inder Sarup, was a result of fraud, ante date and without consideration just in order to defeat the right of the plaintiff on the basis of valid agreement of sale Ex.P1. Such pleadings were specifically denied. The plaintiff has also challenged the judgment and

decree Exs.D1 and D2 obtained by appellant Krishan Inder Sarup against defendant Manjot Singh on similar ground and specific issue regarding validity of the decree was also framed and adjudicated along-with validity of such agreement and both the parties led their respective evidence on such aspect. Mere non framing of specific issue regarding validity of such agreement, which otherwise is covered under issues No.3 and 4 as referred above, does not in any manner affect the judge and decree under challenge in this appeal. My this view is supported by the law laid down in a case titled **Harish Kashinath Mane v. Haribhau Adkoji Sapate, 2010 SCC On Line Bom 325 : (2010) 4 Mah LJ 817 : (2011) 4 Bom CR 648 at page 821**, in which it is held as under :-

“9. Having heard the learned Counsel and on perusal of the record, I find that merely because no issues have been framed does not in any way vitiate the judgment passed by the Courts below. The issues are framed only for the purpose of regulating the proceedings in the suit. It is well settled that omission to frame an issue of fact is not fatal for the suit when the parties went to trial knowing fully well their rival case and led evidence not only in support of his case but also to challenge the case of the adversary. As such, absence to frame specific issue on the point raised and to be decided is not fatal and the finding is not liable to be set aside only on the ground that formal issue has not been framed. In the present case the contentions of the appellant have duly been considered by the Courts below. The appellant has failed to produce any evidence to show that any prejudice was caused to him on account of non-framing of such issues”.

I have gone through the aforesaid extract and find that the reasoning adopted by the Court in appeal to negative contention of the appellant is legal, valid, thus, do not warrant intervention by this Court. Perusal of the averments raised by the respondent/plaintiff, extracted in the judgment passed by the trial Court, makes it evident that the respondent/plaintiff challenged the agreement of sale dated 05.07.2006 between the appellant and Manjot Singh to be the result of forgery and

fabrication on account of collusion between them and he also challenged the judgment and decree passed by the trial Court on the basis of said agreement of sale as well as sale deed dated 20.05.2010 executed in favour of the appellant in the light of judgment and decree passed in the suit filed by the appellant. The trial Court framed issues No.3 and 4 to the following effect:-

- “3. Whether judgment and decree dated 6.12.2008 passed in civil suit No.207 of 21.10.2008, titled as ‘Krishan Inder Sarup Vs. Manjot Singh’ is illegal, null and void?
OPP
4. Whether sale deed dated 20.5.2010 executed by defendant No.1 in favour of defendant No.3 is illegal, null and void? OPP”

As the parties knew fully well that the respondent/plaintiff has assailed judgment and decree dated 06.12.2008 based upon agreement to sell dated 05.07.2006 with specific averment that the agreement is the result of forgery and fabrication with further challenge to the sale deed dated 20.05.2010 executed in favour of the appellant on the basis of decree dated 06.12.2008 and the trial Court has specifically framed the aforesaid two issues onus of which was placed upon the respondent/plaintiff, it is difficult to accept contention of the appellant that non-framing of specific issue qua agreement to sell dated 05.07.2006 can constitute a ground for setting aside the judgments and decrees passed by the Courts below by upholding plea of the appellant that non-framing of an issue qua agreement has caused prejudice to the appellant in defending the proceedings before the trial Court. The Court in appeal has rightly held that the question with regard to agreement of sale is covered under issues No.3 and 4 and does

not in any manner adversely affect the judgment and decree passed by the trial Court while relying upon judgment **Harish Kashinath Mane Vs. Haribhau Adkoji Sapate, 2010 SCC Online Bom 325.** In this view of the matter, contention raised by counsel for the appellant is devoid of merit and deserves outright rejection.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed in *limine*.

JANUARY 16, 2018		(REKHA MITTAL)
‘D. Gulati’		JUDGE
Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no