

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

SAO No.58 of 2014 (O&M)

Date of decision:29.08.2018

Gurwant Singh

... Appellant

Vs.

Shangara Singh and others

... Respondents

SAO No.60 of 2014 (O&M)

Gurwant Singh

... Appellant

Vs.

Shangara Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. V.K.Sandhir, Advocate
for the appellant.

Ms. Manjeet Kaur, Advocate, for
Mr. Karamjit Singh, Advocate
for respondents No.6 to 9.

AMIT RAWAL J. (Oral)

This order of mine shall dispose of two SAOs bearing Nos.58 and 60 of 2014 filed on behalf of the plaintiff who had been successful before the trial Court in respect of suit claiming specific performance of two agreements to sell dated 26.06.2001 for two parcels of land. However, in appeal filed by defendants No.6 to 9 before the Lower Appellate Court, an application under Order 14 Rule 5 read with Section 151 of Code of Civil Procedure (Annexure P-2) was submitted for framing the following issues:-

“i) Whether the suit of the plaintiff is vague, lack of material particulars and proper detail have not been mentioned in the plaint, therefore, the suit in question is required to be dismissed? OPD

ii) Whether the plaintiff has not come to the Court with clean hands and since he is guilty of suppression of true and material facts from the notice of this Honourable Court, so he is not entitled to any relief as prayed for?OPD”

The aforementioned application was contested by the plaintiff on the premise that no such plea had been taken by the defendants in the written statement, therefore, there was no occasion for moving such application.

Mr. V.K.Sandhir, learned counsel appearing on behalf of appellant submitted that though the proposed issues have not been accepted by the Lower Appellate Court but the following issues have been framed:-

i) Whether the alleged agreement to sell dated 26.6.2002 is not legally enforceable?OPD

ii) Whether the alleged agreement to sell is even otherwise not enforceable as it was never executed by Mukhtar Singh, defendant No.4 and not be defendant no.5 which amounts to part performance?OPD”

In order to lend support to the aforementioned argument, attention of this Court has been drawn to the preliminary objections taken by defendants No.6 to 9 in the written statement which are extracted herein

below:-

“The defendants No.6 to 9 respectfully submit as under:-

- 1. That the present suit filed by the plaintiff is legally not maintainable in the present form, as such, the same is required to be dismissed on this short score only.*
- 2. That the plaintiff has no locus standi to file the present suit.*
- 3. That the plaintiff is estopped by his own act and conduct from filing the present suit.*
- 4. That the plaintiff has not come to the Court with clean hands and since he is guilty of suppressing material and true facts from the knowledge of this Hon'ble Court, therefore, he is not entitled to the relief as prayed for by him.*
- 5. That the replying defendants are bonafide purchasers of property in question for consideration and without notice of defect of title or of any such agreement as pleaded by the plaintiff. Therefore, no suit against the replying defendants is sustainable.*
- 6. That the plaintiff even otherwise, has given wrong description and particulars of the defendant. Defendant No.8 namely Jarnail Singh is a major at present while defendant no.9 namely Harjait Singh, who is minor, has not been properly sued, neither any permission as per relevant provisions of Code of Civil Procedure has been obtained by the*

plaintiff for suing defendant no.9 through any of his natural guardian.

7. *That the suit of the plaintiff is vague and since lack material particles and proper details have not been mentioned by the plaintiff, therefore, the suit in question is required to be dismissed.*

8. *That the suit of the plaintiff is barred by limitation and as such, the same is required to be dismissed.”*

Thus, in the absence of any pleadings, much less, objections taken in the written statement, no such issues can be framed. The factum of the agreement allegedly executed by the plaintiff and defendants No.1 to 5 was admitted but stated that defendants No. 6 to 9 did not have the knowledge of the agreement to sell as it was not disclosed by the vendors and therefore, they were bonafide purchasers.

It was next contended that application was just to protract the implementation of the judgment and decree but the Lower Appellate Court failed to notice the element of delay and thus, urged this Court for setting aside the order under challenge.

Per contra, Ms.Manjeet Kaur, learned counsel appearing on behalf of respondents No.6 to 9 submitted that order under challenge is perfectly legal and justified, for, Lower Appellate Court while remanding the matter in toto noticed that the obligation on the part of the trial Court for framing the issues is by referring to the contents of the written statement. In fact, the agreement to sell dated 26.06.2001 was not enforceable, for, it was

never executed by Mukhtar Singh and thus, urged this Court for upholding the order under challenge.

I have heard the learned counsel for the parties and appraised the paper book.

On cumulative reading of the issues proposed and are framed by the trial Court, much less preliminary objections taken in the written statement and as well as contents of paragraph 3 of the written statement on merit read as under:-

“3. That para no.3 of the plaint is replied as such, that the replying defendant no.6 to 9 were not having any knowledge regarding the alleged agreement to sell dated 26.06.2001 and as such these persons while acting in a bonafide manner have purchased the suit land by the means of different sale deeds of dated 21.12.2002, 22.01.2003 and 22.4.2003 respectively for a valuable consideration from defendants No.1 to 4. And accordingly, they have become exclusive, legal and lawful owner in possession of the properties above referred. After receiving the notice of the present suit, the replying defendants have verified the real facts and this fact have revealed to the knowledge of the replying defendants that plaintiffs have agreed to take the land in question for a total consideration amount of Rs.5,08,000/- per acre from the defendants no.1 to 4 by the means of an agreement to sell of dated 26.6.2001 and the defendants had also paid an earnest money of Rs.2,00,000/-

to defendants no.1 to 4. As for the knowledge of the replying defendants, the sale deed in favour of the plaintiff was to be executed on or before 25.2.2002 and the plaintiff was duty bound to pay the remaining entire consideration amount to the defendants no.1 to 4 at that time. This fact has further revealed to the knowledge of the replying defendants that plaintiff had intentionally and willfully committed default in performing his part of the contract, as he did not have sufficient arrangement of the funds required for the execution of the sale deed in his favour and moreover, on account of the reasons that he had malafide intention in his mind. It has also come to the knowledge of the replying defendants that plaintiff had paid an earnest money of Rs.2,00,000/- in the shape of Rs.1,00,000/- in cash while another sum of Rs. 1,00,000/- by bank draft. It has also come to the knowledge of the replying defendants that plaintiff had agreed to get the sale deed positively executed on 25.2.2002 after paying the balance sale consideration. It has also been admitted that for time being that the total sale consideration amount was settled to be Rs.5,08,000/- per acre. It is, however, denied the defendants No.1 to 4 had stated that the land in question are lying under mortgage with any bank. It is, further denied that defendants no.1 to 4 had ever assured to show any clearance certificate as alleged in the present para. In this context, it is respectfully prayed that the terms and

conditions incorporated in the alleged agreement to sell of dated 25.06.2001 may kindly be referred to.”

I am of the view that no such issues as framed by the Lower Appellate Court required adjudication. Even otherwise, if at all, there had been abdication on the part of the trial Court in not framing the issues, remedy was to seek the report and not to set aside the entire judgment.

I cannot remain oblivious of the fact that defendants No.1 to 5/vendors were proceeded against ex parte in Civil Suit No.436 of 2004 (SAO No.58 of 2014) and therefore, it does not lie in the mouth of defendants No.6 to 9 to take plea of non-execution of the agreement to sell. In fact, it tantamounts to withdrawing the admission in the written statement, therefore, there is gross illegality and jurisdictional error in the order under challenge. Defendants No.1 to 5 appeared in Civil Suit No.339 of 2003 (SAO No.60 of 2014) and admitted the execution of the agreement to sell, therefore, such issues cannot be framed.

Resultantly, the impugned order is hereby set aside and the matter is remitted to the Lower Appellate Court to decide the appeals in accordance with law.

The appeals are allowed.

(AMIT RAWAL)
JUDGE

August 29, 2018

savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No