

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

CR No. 6294 of 2018(O&M)

Date of decision:30.04.2019

Sukhbir Singh

... Petitioner

Vs.

Surjit Kaur and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Rakesh Gupta, Advocate for the petitioner.

Mr.K.B. Raheja, Advocate for respondent Nos. 2 to 5.

AMIT RAWAL J. (Oral)

The present revision petition is directed against the impugned order whereby application of the petitioner-defendant no.1 seeking amendment of written statement in a suit for possession and permanent injunction claiming title, ownership on the basis of sale deed dated 05.04.1958 alongwith consequential relief has been dismissed.

The respondents-plaintiffs sought the aforesaid relief on the basis of sale deeds, which were executed in their favour, against which the defendant-petitioner raised numerous preliminary objections and on the basis of the pleadings, learned trial Court framed the following issues:-

- “1.Whether the plaintiff is entitled to possession of suit property, as prayed for?OPP
2. Whether the plaintiff is entitled to permanent injunction as prayed for?OPP
3. Whether defendants No.1 and 2 are owners in possession of land in dispute on the basis of sale deed dated 25.04.2000?OPD

4. Whether suit of the plaintiff is not maintainable in the present form?OPD

5. Relief.”

Mr. Rakesh Gupta, learned counsel appearing on behalf of the petitioner submitted that by virtue of amendment of the written statement sought to be incorporated by framing of additional issue at the appellate stage, would decide the controversy between the parties. The objections raised in the application filed under Order 9 Rule 8 CPC as well as of bonafide purchaser though have been taken but the Court below did not frame the issue in question. The lower Appellate Court is empowered to amend the issue but the same was declined and serious prejudice would be caused to the rights of the petitioner.

Per contra, Mr. K.B. Raheja, learned counsel appearing on behalf of respondent Nos. 2 to 5 submitted that the objection regarding bonafide have been taken, even if, the issues were not framed, it is settled law that both the parties led evidence and the Court can always adjudicate the controversy. It is an attempt to delay the adjudication of the appeal and the Court below has rightly dismissed the application.

I have heard learned counsel for the parties and perused the paper book and am of the view that there is no force and merit in the submissions of Mr. Rakesh Gupta, learned counsel for the petitioner.

The law with regard to non-framing of additional issue after leading evidence is no longer *res integra* in view of the ratio of law laid down in **P. Purushottam Reddy vs. M/s Pratap Stels Ltd. 2002(2) SCC**

686. The operative paragraph is as under:-

“Assuming that there was any deficiency in the pleadings and also an omission on the part of the trial court to frame a specific issue, the present one is a case where the applicability of the law laid down by this court in [Nagubai Ammal and Ors. v. B. Shama Rao and Ors. AIR 1956 Supreme Court 593](#), was squarely attracted. In Nagubai case this court was called upon to examine if the plea of lis pendens was not open to the plaintiff on the ground that it had not been raised in the pleadings. Neither the plaint nor the reply statement of the plaintiff contained any averment that the sale was affected by the rule of lis pendens. There was no specific issue directed to that question. However, evidence was adduced by the plaintiff on the plea of lis pendens and not objected to by the defendants. The question was argued and tested by taking into consideration the evidence that the proceedings were collusive in character with a view to avoid operation of [Section 52](#) of the T.P. Act. This court felt satisfied that the defendants went to trial with full knowledge that the question of lis pendens was in issue, had ample opportunity to adduce their evidence thereon, and fully availed themselves of the opportunity. This court formed the opinion that in the circumstances of the case, absence of a specific pleading on the question was a mere irregularity which resulted in no prejudice to the defendants. After having noticed the rule of pleadings as applicable to civil law that "no amount of evidence can be looked into upon a plea which was never put forward", this court held. "The true scope of this rule is that evidence let in on issues on which the parties actually went to trial should not be made the foundation for decision of another and different issues, which was

not present in the minds of the parties and on which they had no opportunity of adducing evidence. But that rule has no application to a case where parties go to trial with knowledge that a particular question is in issue, though no specific issue has been framed thereon and adduce evidence relating thereto".

The objection qua bonafide purchaser under Order 9 Rule 8 CPC has already been taken in the written statement as much evidence has been led. It will not curtail the right of the defendants to raise objection at the relevant time but cannot seek re-casting of the issues and report from the trial Court. The impugned order does not suffer from illegality and perversity.

Accordingly, the revision petition is dismissed.

Anything observed by this Court hereinabove cannot be construed as an expression of opinion on the merit of the case.

(AMIT RAWAL)
JUDGE

April 30, 2019
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Whether Speaking/Reasoned Yes/No
Whether Reportable Yes/No