

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

**RSA No.4255 of 2016 (O&M)  
Date of Decision.24.01.2019**

Sandeep Singh

...Appellant

Vs

Baldev Singh and another

...Respondents

**CORAM:HON'BLE MR. JUSTICE AMIT RAWAL**

Present: Mr. S.C. Chhabra, Advocate  
for the appellant.

-:-

**AMIT RAWAL J. (ORAL)**

**C.M. No.10980-C of 2016**

For the reasons stated in the application, delay of 5 days  
in filing of the appeal is condoned.

Application is allowed.

**RSA No.4255 of 2016 (O&M)**

The appellant-defendant No.2 is in regular second appeal  
against the concurrent finding of fact whereby suit of the respondent  
No.1-plaintiff has been decreed by the trial and affirmed by the lower  
Appellate Court.

The plaintiff sought specific performance of agreement  
to sell dated 09.06.2006 in respect of land measuring land measuring  
5 kanals 6 ½ marlas, agreed to be sold at the rate of ₹2,75,000/- per  
acre against the payment of ₹60,000/- as earnest money. The  
stipulated date for execution and registration of the sale deed was  
10.12.2006, which was extended to 31.12.2006 and then 30.04.2007  
with the consent of the parties. The suit was filed on 4.8.2007 on the  
premise that during the subsistence of agreement to sell, defendant

No.1 vide sale deed dated 15.02.2007 sold the land to appellant-defendant No.2.

Defendant No.1 contested the suit and raised the objection of locus standi. It was stated that plaintiff was not ready and willing to perform his part of agreement as he did not have sufficient money and therefore, earnest money was forfeited.

Defendant No.2 took plea of bona fide purchaser.

Since the parties were at variance, the trial Court framed the following issues:-

*“1. Whether the plaintiff is entitled to possession of the suit land as prayed in the head note of the plaint or in the alternative entitled to the recovery of Rs.1,20,000/-?*

*OPP*

*2. Whether the plaintiff has no locus standi to file the present suit? OPD*

*3. Whether the plaintiff has no locus standi to file the present suit? OPD*

*4. Whether the plaintiff is estopped by his own act and conduct from filing the present suit? OPD*

*5. Whether the plaintiff has not come to the Court with clean hands? OPD*

*6. Whether the defendants are entitled to special costs? OPD*

*7. Relief.”*

The plaintiff examined four witnesses including marginal witnesses of the agreement and witness of the extension whereas the

defendant No.1 examined himself and one Darshan Singh, DW2, guardian of defendant No.2.

Mr. Chhabra, learned counsel appearing on behalf of the appellant in support of the memorandum of appeal has raised following submissions:-

(i) The trial Court did not frame issue of readiness and willingness, much less, bona fide purchaser and the lower Appellate Court being the last court of fact and law did not appreciate the same, therefore, there is abdication.

(ii) Sandeep Singh concededly was minor but the suit was not properly filed having not been sued through guardian.

(iii) Plaintiff miserably failed to prove ingredients of Section 16(c) of the Specific Relief Act as he could not have ready cash, resulting into four extensions.

I have heard learned counsel for the appellant, appraised the paper book and of the view that there is no force and merit. It is settled law that if issue is not framed and parties are alive to the same and lead evidence, it would not be fatal for adjudication of the *lis*. The aforementioned view of mine is derived from judgment of Division Bench of this Court in **P. Purushottam Reddy Vs. M/s Pratap Steels Ltd. 2002 (2) RCR Civil 70.** The relevant paragraphs 9 and 10 of the same reads as under:-

*“9. 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 other vs. B.Shama Rao and others AIR 1956 SC 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 then 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 toward", 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 issue, 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.*

*10. In the case before us it was not the grievance raised by any of the parties before the High Court that there was any failure on the part of the trial court in discharging its obligation of framing issues. Nobody complained of prejudice at the trial for want of any issue or a specific issue. It was nobody's case that any evidence, oral or documentary, was excluded or not allowed to be taken on record by the trial court. The very fact that the defendant appellants have come up to this court laying challenge to the order of remand shows that the appellants are not interested in remand and do not want any additional issue to be framed or to adduce any further evidence. One of the pleas taken by the appellants in the memo of special leave petition is that the High Court had erred in remanding the matter back for fresh trial and the High Court had failed to appreciate that there was sufficient material on record to show absence of readiness and willingness on the part of the plaintiff to perform its part of the contract. On the other hand, after the passing of the impugned order of remand the plaintiff-respondent has also through his counsel, filed a memo before the trial court on 18.2.2000 submitting that on the additional issues framed pursuant to the direction of the High Court, the evidence on behalf of the plaintiff was already on record and the plaintiff would lead rebuttal evidence only if any evidence only if any evidence was adduced by the defendants. Thus the plaintiff is also not desirous of adducing any additional evidence on the issues.”*

No doubt, the lower Appellate Court being the last court of fact and law is enjoined upon an obligation to deal with all the points by framing issues of determination. It is evident that objections taken by the appellant, as noticed above, were also dealt

with by the lower Appellate Court and found that plaintiff had been ready and willing. Witnesses also proved that vendor of appellant-defendant No.2 i.e. defendant No.1 had voluntarily agreed for the extensions and the signatures were also not denied/controverted. In such circumstances, agreement to sell and earnest money could not deem to have been forfeited. It is a matter of record that sale deed in favour of defendant No.2 is during the subsistence of agreement to sell. No agreement to sell prior to the agreement to sell than in question has been entered. There is no compliance of Section 41 of the Transfer of Property Act.

For the reasons aforementioned, I do not find any illegality and perversity in the concurrent finding of fact rendered by the Courts below, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal is dismissed.

**(AMIT RAWAL)**  
**JUDGE**

**January 24, 2019**

Pankaj\*

Whether Reasoned/Speaking    Yes

Whether Reportable                No