

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

**SAO No. 2 of 2016 (O&M)
Date of Decision: April 02, 2019**

Sukhbir Kaur and another

.....APPELLANTS

VERSUS

Ajmer Singh and others

.....RESPONDENTS

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. S.S.Swaich, Advocate
for the appellants.

Mr. H.S.Baath, Advocate
for respondent No. 1.

Respondents No. 2 and 3 ex parte vide order dated 17.03.2016.

SURINDER GUPTA, J.(Oral)

Heard.

In civil suit filed by plaintiff- respondent Ajmer Singh, learned
trial Court framed six issues as follows:

- 1. Whether plaintiff is entitled for possession by way of specific performance of the agreement to sell dated 25.1.2007 executed by defendant no. 1 in favour of plaintiff, as prayed for? OPP.*
- 2. Whether plaintiff is entitled for declaration, as prayed for? OPP.*
- 3. Whether plaintiff is entitled for permanent injunction, as prayed for? OPP.*
- 4. Whether the suit of the plaintiff is not maintainable in the present form? OPD.*
- 5. Whether plaintiff has no cause of action and locus standi to file the present suit? OPD.*

6. Whether plaintiff is estopped by his own act and conduct to file the present suit? OPD.

The findings on issues No. 1, 2, 3, 4 and 6 were recorded against the plaintiff while finding on issue no. 5 was recorded in favour of plaintiff and suit was dismissed.

In appeal, learned Ist Appellate Court framed two additional issues as follows:

2-A: Whether defendants no. 2 and 3 are bonafide purchasers of property vide sale deed Wasika No. 2237 dated 21.3.2007? OPD (2&3).

2-B: Whether the defendant no. 4 is bonafide purchaser of the property vide sale deed Wasika No. 2184 dated 14.3.2007? OPD(4).

On framing of additional issues the judgment and decree of the trial Court was set aside by the Ist Appellate Court with direction to record fresh evidence on additional issues and decide the case afresh.

Learned counsel for the appellants submits that respondent No. 1 had filed suit seeking possession by way of specific performance of the agreement to sell dated 25.01.2007. The appellants are subsequent purchasers. Even if, the Ist Appellate Court has found need to frame two additional issues, the course open before it was either to call report of the trial Court on the additional issues or to proceed further by recording evidence on additional issues itself and then decide the appeal on merits. Framing of additional issues in no manner is the reason to set aside the judgment and decree of the trial Court on merit without differing with the conclusion arrived on issues framed by it.

As per provisions of Order 41 Rule 25 CPC, the Appellate

Court after framing of additional issues could proceed to try such issues or could send the file back to the trial Court to take additional evidence as required and send its report. The mere framing of issues as to whether the subsequent purchasers are bona fide purchasers is no ground to set aside the judgment of the trial Court. The order passed by the Ist Appellate Court being not in consonance with the provisions of Order 41 Rule 25 CPC is not sustainable, hence, set aside.

Consequently, the appeal is accepted. The parties are directed to appear before the lower Appellate Court/Successor Court, Rupnagar on 02.05.2019, on which date, the file of appeal will be taken on Board and learned Appellate Court shall proceed to decide the same on merits as per observations above.

April 02, 2019
Jyoti-II

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***