

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

RSA No.6107 of 2015 (O&M)

Date of decision : 18.03.2019

Mohinder Singh (deceased) through his LRs and others

...Appellants

Versus

Shingara Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Harsh Manocha, Advocate for the appellants.

Mr. Nakul Sharma, Advocate for the respondent.

ANIL KSHETARPAL, J. (ORAL)

Defendants-appellants are in the Regular Second Appeal against the judgments passed by the Courts below.

This Court is at the outset of the considered view that the Courts have failed to decide the real controversy between the parties on account of framing of wrong issues. The plaintiff is alleged to have purchased the property from owner Tara Singh vide registered sale deed dated 25.11.1991. He has claimed that after construction over some portion, he had leased out the property to the defendants.

On the other hand, the defendants had pleaded that Tara Singh had executed an agreement to sell in their favour on 29.12.1981 for a total sale consideration of ₹2500/- out of which ₹2000/- was paid as earnest money. It is further pleaded that the sale deed was to be executed after Tara

Singh gets proprietary rights in the property in dispute. Defendants have also claimed that they have raised construction on the property by spending ₹1,50,000/-.

There is another agreement pleaded in favour of Ganda Singh from Jarnail Singh with respect to the land measuring 5 marlas. It is further pleaded that as per the condition of the allotment, allottees could not transfer the property for a period of 20 years and for that reason only agreements to sell were executed and possession was delivered.

Learned trial Court framed the following issues:-

- “1. Whether the plaintiff is entitled for possession of suit property as alleged? OPP*
- 2. Whether the suit of the plaintiff is not maintainable as alleged? OPD*
- 3. Whether Ganda Singh and Jarnail Singh have purchased the property from Tara Singh and had taken the possession vide sale deed as alleged, if so, what effect? OPD*
- 4. Relief.”*

It is apparent that the Court framed the issues on the basis of prayer made in the suit which is not in accordance with the requirement of Order XIV of the Code of Civil Procedure which provides that each material proposition of fact or law shall be subject matter of separate and distinct issue. The issues can be of issue of fact as also issue of law. However, it is apparent that neither any issue was framed with regard to validity of the agreement to sell nor any issue was framed as to who raised the construction as plaintiff and defendants both claimed that they have raised construction.

Learned First Appellate Court has also erred in recording a finding that the agreement to sell is not binding on the plaintiff as he has

became owner vide sale deed dated 25.11.1991 executed by Tara Singh. Such observations are wrong because the agreement to sell if executed by Tara Singh would be enforceable.

Still further, both the Courts have also not examined the case from the prospective of Section 53-A of the Transfer of Property Act, 1882 i.e. defendant continuing in possession in part performance of the contract.

Learned counsel appearing for the respondent has also submitted that he has also filed cross objections challenging the part of the judgment passed by the learned First Appellate Court, which although have not been listed.

Keeping in view the aforesaid facts and without further deliberating upon the merits of the case, lest it may prejudice interest of any of the party, it is considered appropriate to remit the matter back to the trial Court to frame proper issues and thereafter grant opportunity to the parties to lead further evidence if any and thereafter proceed to decide the suit de novo.

Accordingly, present Regular Second Appeal is disposed of.

Parties through their counsel are directed to appear before the Court on 10.04.2019.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

18.03.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No