

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

SAO No. 8 of 2015 (O&M)

Date of Decision: 12.04.2019

Jivan Kumar

...Appellant

VERSUS

Joga Singh

...Respondent

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Parvinder Singh, Advocate
for the appellant.

Mr. Jagatpal Singh Banwait, Advocate
for Mr. Sarju Puri, Advocate
for the respondent.

SURINDER GUPTA, J.

This is appeal against order dated 26.11.2014 passed by Additional District Judge, S.B.S. Nagar, whereby in appeal against judgment and decree dated 01.02.2012 passed by Additional Civil Judge (Sr. Division), S.B.S. Nagar, the case was remanded to learned trial Court with direction to frame additional issues to the effect that agreement to sell is result of fraud, coercion and misrepresentation and that the suit was not maintainable.

2. In later part of the judgment parties will be referred as 'plaintiff' and 'defendant' as per civil suit.

3. Plaintiff filed suit seeking the relief of possession by specific performance of agreement dated 14.03.2005, which was decreed by the Additional Civil Judge (Sr. Division), S.B.S. Nagar and the defendant was directed to execute and get the sale deed registered in favour of plaintiff as per terms and conditions of agreement dated 14.03.2005.

4. In written statement filed by the defendant a plea had been raised that the agreement to sell is result of fraud, coercion, misrepresentation and was got executed under police pressure in connivance with other witnesses, scribe, SHO Manjit Singh, Police Station Nurmahal, and Shinder, resident of Mehsampur, P.S. Bilga.

5. From pleadings of parties following issues were framed:-

1. Whether defendant executed an agreement to sell dated 14.03.2005 regarding the suit land in favour of plaintiff?
OPP
2. Whether plaintiff is entitled for possession by specific performance of contract dated 14.03.2005? OPP
3. Whether in the alternative, plaintiff is entitled for recovery of ₹11,80,000/- as prayed for? OPD
4. Whether plaintiff is barred by his act and conduct to file the present suit? OPD
5. Whether plaintiff has no locus standi to file this suit?
OPD
6. Relief.

6. While recording findings on issues no. 1, 2, 4 and 5, learned trial Court looked into the plea of fraud raised by defendant and discarded the same while recording specific finding that defendant had executed agreement to sell dated 14.03.2005 in favour of plaintiff and that plaintiff was always ready and willing to perform his part of the contract.

7. Learned Ist Appellate Court while taking note of the plea taken by the defendant in written statement that agreement to sell was result of fraud, coercion and under the influence of SHO Manjit Singh, P.S.

Nurmahal, observed that learned trial Court has not framed any issue regarding this plea and opportunity was to be allowed to defendant to lead evidence. With these observations findings of learned trial Court on all the issues recorded in favour of plaintiff were set aside and case was remanded to learned trial Court with direction to frame additional issues and decide the case afresh.

8. A question, which arises for consideration, is as to whether order of learned Ist Appellate Court is legal? Firstly, so far as framing of additional issue is concerned, as per provisions of Order XLI Rule 25 CPC, learned Ist Appellate Court may frame additional issue, try the same or refer the same for trial to the Court from whose decree the appeal is preferred with direction to take additional evidence, if required. The mere framing of additional issue is no reason to set aside the reasoned findings recorded by learned trial Court on all the issues.

9. In this case defendant was well aware of his plea. He had made statement in support of his plea. When parties have gone to the Court, knowing fully well the controversy in suit and have led evidence, this plea is not available that they could not produce particular evidence for want of issue. In this case specific issue was framed by learned trial Court as issue no. 1 **“Whether defendant executed an agreement to sell dated 14.03.2005 regarding the suit land in favour of plaintiff?”** Plaintiff led evidence to prove this issue and defendant led evidence in rebuttal to prove his plea that the agreement was result of fraud, coercion, misrepresentation and pressure of SHO Manjit Singh, P.S. Nurmahal. The defendant while appearing as DW-1 has stated all the facts relating to pressure, fraud, misrepresentation, coercion etc. and learned trial Court has also taken note

of these facts while discarding the same. It is a different matter as to whether learned Ist Appellate Court has agreed with reasoning recorded by learned trial Court or not but there was no reason for learned Ist Appellate Court to direct framing of additional issues. Though, defendant has taken the plea in the written statement that suit is not maintainable but has not elaborated the same as to how the suit is not maintainable. Order XLI Rule 24 CPC authorizes the Court to resettle the issue if necessary and finally determine the suit when evidence is sufficient to enable learned Ist Appellate Court to pronounce the judgment.

10. Here learned counsel for the appellant has argued that the defendant in his appeal has moved application under Order XLI Rule 27 CPC seeking permission of learned Ist Appellate Court to lead additional evidence and to produce on record certain documents. As the case was remanded, the application filed by the defendant was not decided. The parties have led evidence on all the issues and as to whether permission to lead additional evidence is to be allowed on the application of defendant under Order XLI Rule 27 CPC, is a matter to be seen on merit and is not to be commented upon in this appeal. It is right that it is duty of the Court to frame issue which in this case have been framed and the opportunity to defendant to lead evidence on his plea of fraud etc. was given to him in rebuttal to issue no. 1. There was no need to frame a separate issue on above plea of defendant with regard to maintainability of suit as no specific plea has been taken as to how suit is not maintainable.

11. As a sequel of my above discussion, order passed by learned Ist Appellate Court is perverse and suffers from legal infirmity, as such, is not sustainable. This appeal has merit and the same is accepted. Order passed by

learned Ist Appellate Court dated 26.11.2014 is set aside. Parties are directed to appear before learned Ist Appellate Court/successor Court on 19.05.2019, on which date file of the appeal shall be taken on board and proceeded further in accordance with law.

April 12, 2019
jk

(SURINDER GUPTA)
JUDGE

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

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