

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

212

SAO-89-2014 (O&M)
Date of Decision : 24.09.2019

Surjit Kaur

.... Appellant

Versus

Amrik Singh

.... Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Ms. Vandana, Advocate
for the appellant.

Mr. Sunil Agnihotri, Advocate
for the respondent.

RAMENDRA JAIN, J. (ORAL)

Through this appeal, appellant-plaintiff has laid challenge to the judgment of lower Appellate Court dated 25.08.2014, whereby, it setting aside judgment and decree of the trial Court dated 15.11.2011, remanded the case for fresh decision, after affording opportunities to both the sides to lead their evidence, if any.

Briefly, appellant-plaintiff filed a suit for joint possession qua land measuring 1 Kanal 1 Marla out of total land measuring 11 Kanals 16 marlas, fully detailed in the head note of the judgment of the trial Court situated at Khairabad, Tehsil Dasuya, District

Hoshiarpur against the respondent.

After notice, respondent appeared and contested the suit. Both the sides led evidence to their satisfaction.

However, irregularity of non framing of necessary issues came to the notice of the trial Court at the fag end of trial. Resultantly, the trial Court framed the necessary issues and vide judgment and decree dated 15.11.2011 and recording issue wise findings on appreciation of evidence decreed the suit of the appellant-plaintiff.

Being aggrieved, respondent approached the lower Appellate Court pointing out aforesaid mistake of the trial Court of framing issues at the fag end, after recording evidence, who remanded the case, setting aside judgment and decree of trial Court.

Learned counsel for the appellant contends that the lower Appellate Court did not appreciate that respondent-plaintiff did not ever plead in his grounds of appeal that framing of issues, after recording evidence by the trial Court was prejudicial to his rights.

On the other hand, learned counsel for the respondent-defendant vehemently refuting the above submissions, pleaded legality and validity of impugned judgment, contending that on 09.11.2011, noticing its mistake of recording evidence without framing issues, the trial Court, immediately framed issues. Thus,

trial Court was required to afford an opportunity to both the sides to lead their evidence further, if any, but, instead, it closed evidence of the respondent by Court order, which prejudiced his legal right to prove his case in effective manner. On 09.11.2011, the case was adjourned to 15.11.2011 and on that very date, the trial Court disposed of the suit, in haste.

Having given thoughtful consideration to the submissions, this Court finds the instant appeal merits acceptance for the reasons to follow.

For ready reference, order dated 09.11.2011 is reproduced hereunder :-

“Cost paid, one DW Amrik singh examined. No other DW is present. Adjournment prayed which is opposed. From the perusal of the file I find that plaintiff closed evidence on 26.05.2011 and since then despite availing 12 opportunities, the defendant failed to conclude his evidence. As such, this court does not find any justification in adjourning the case further for remaining evidence of the defendant. As such, evidence of the defendant is closed by order.

At this stage, it has come to the notice of the Court that issues have not been framed. So, from the pleadings of the parties, the following issues are framed ;

- 1. Whether the defendant executed an agreement dated 15.09.2004 on*

receipt of Rs.1,50,000/- as earnest money in favour of the plaintiff? OPP

2. Whether the plaintiff remained ready and willing her part of contract? OPP

3. Whether the plaintiff is entitled to the possession of the suit property by way of specific performance of the agreement to sell dated 15.09.2004? OPP

4. Whether the suit is maintainable? OPP

5. Whether the plaintiff has locus standi to file the present suit? OPP

6. Whether the suit is bad for non-joinder and mis-joinder of necessary parties as alleged? OPD

7. Whether the defendant had borrowed money from Baldev Singh who obtained his signatures on blank papers and gave the same to Surjit Kaur plaintiff? OPD

8. Relief.

No other issues arises, pressed or claimed. Now for rebuttal evidence, case is adjourned to 15.11.2011 for rebuttal evidence.”

A perusal of aforesaid order shows that respondent-defendant, despite, affording 12 effective opportunities, did not conclude his evidence. Thus, finding no option, the trial Court closed his evidence. The grouse of the respondent-defendant that closure of his evidence by court order greatly prejudiced him, has

no force, inasmuch as, he despite availing 12 effective opportunities did not conclude his evidence, nor disclosed the Court as to what evidence he wanted to lead further to rebut the case of the appellant-plaintiff. He only examined one Hardip Singh as DW2 and himself, despite availing 12 effective opportunities. DW2-Hardip Singh did not offer himself for his cross-examination by appellant-plaintiff. Even, respondent-defendant, on framing of issues on 09.11.2011, did not make any request to the trial Court or brought to its notice as to which evidence, he intended to lead further after framing of issues. Thus, case was adjourned to 15.11.2011 for rebuttal, if any, and arguments. On that date also, respondent-defendant did not make any oral request to the trial Court or move any application, citing some witnesses to whom, he intended to examine.

It is well settled proposition of law that question of framing or non-framing of issues becomes immaterial, in case, parties knowing their case well lead evidence to their satisfaction.

On specifically asking by this Court as to which evidence the respondent-plaintiff intends to lead, learned counsel for the respondent-plaintiff could not disclose as to what new evidence, he wanted to lead after framing issues and what prejudice has been caused to the respondent-plaintiff for not affording any opportunity to lead evidence after framing of issues.

It is needless to mention that the trial Court by framing

issues after recording evidence of both the sides only had cured an irregularity and not any illegality which occurred on account of some human error.

The Appellate Court after appreciation of evidence led by both the sides on record ought to have decided the appeal on merit, without remanding the case, inasmuch as, wisdom of the Appellate Court is always much more than a trial Judge.

In view of the above, impugned judgment, remanding the case to the trial Court for fresh decision is set aside with direction to the Appellate Court to decide the appeal itself, hearing both the sides.

Disposed of.

September 24, 2019
anju

(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No