

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

**CR No. 163 of 2020 (O&M)
Date of Decision: 12.02.2020**

Harpreet Singh

.... Petitioner

Versus

Sarabjit Kaur and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. S.K.Singla, Advocate
for the petitioner.

Mr. Shubham Goyal, Advocate
for the respondents.

ANIL KSHETARPAL, J. (ORAL)

The defendant has filed the present revision petition against order dated 04.12.2019 passed by learned trial Court refusing to delete issue No. 6.

The plaintiffs-respondents have filed a suit for possession by way of specific performance of the agreement to sell dated 28.02.2005. The defendant-petitioner contested the suit on the ground that such agreement to sell was never executed and is result of forgery and fabrication.

Learned trial Court on appreciation of pleadings framed following issues:-

- “1. Whether the plaintiff are entitled for relief of possession by way of specific performance of the agreement of sell dated 28.02.2015 executed by the defendant in favour of Bhinder Singh? OPP**
- 2. Whether the plaintiff are entitled for alternative relief of Rs. 6,65,000/- on account of earnest money, damages along with interest? OPP**

3. Whether the plaintiff are entitled for permanent injunction, as prayed for? OPP
4. Whether the plaintiffs always remain ready and willing to perform their part of the contract? OPP
5. Whether the suit of plaintiffs is not maintainable in the present form? OPD
6. Whether the alleged agreement to sell dated 28.02.2015 is illegal, forged and fabricated document? OPD
7. Relief. ”

The defendant filed an application for deletion of issue No. 6 as it would be covered by issue No. 1. However, learned trial Court dismissed the application on the ground that once the defendant asserts that the alleged agreement to sell is illegal, forged and fabricated, therefore, the onus is on the defendant to prove that fact.

This Court has heard learned counsel for the parties and with their able assistance, gone through the paper book. As per Order 14 Rule 1 CPC, the trial Court is obliged to frame distinct issue on each material proposition alleged by one party and denied by the other. The issues can be of two types- issues of fact and issues of law. However, Code of Civil Procedure does not provide that on one material proposition, there would be two separate or distinct issues. Once, issue No. 1 has been framed, onus whereof has been put on the plaintiff, it would also cover the findings to be arrived at under issue No. 6. The plaintiff has filed the present suit seeking possession by way of specific performance of the agreement to sell. So, initially onus is on the plaintiff to prove that fact. Once, the plaintiff proves that fact, onus shifts on the defendant.

In such circumstances, in the considered view of this Court, issue No. 6 is superfluous and not necessary. Accordingly, the present revision petition is allowed. Issue No. 6 shall stand deleted. Learned trial Court is requested to proceed with the case.

Petition allowed.

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

(ANIL KSHETARPAL)
JUDGE

12.02.2020
Maninder

Whether speaking/reasoned	:	Yes
Whether reportable	:	No