

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

-.-

CR-7487-2017 (O&M)

Date of Decision : 02.12.2022

Suraj Pal & Another

....Petitioners

VERSUS

Ved Parkash (deceased) through LRs.

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. V.K.Sandhir, Advocate for the petitioners.

Mr. Veneet Sharma, Advocate for the respondents.

-.-

ALKA SARIN, J. (Oral)

The present revision petition has been filed under Article 227 of the Constitution of India challenging the order dated 11.09.2017 (Annexure P-6) whereby the application filed by defendant-petitioners under Order 14 Rule 5 read with Section 151 CPC for framing of additional issues before the Appellate Court has been dismissed.

The brief facts relevant to the present lis are that the plaintiff-respondent herein filed a civil suit for declaration to the effect that sale deed dated 11.06.2007 executed by the alleged attorney of the plaintiff-respondent i.e. defendant-petitioner No.1 in favour of defendant-petitioner No.2 with respect to half share of the plaintiff-respondent in property as described in the plaint was null and void.

On the pleadings of the parties, vide order dated 16.04.2013, the following issues were framed :

1. Whether the plaintiff cancelled the power of attorney dated 29.05.2006 on 21.05.2007 ? OPP
2. If issue No.1 proved, whether the plaintiff is entitled to declaration as prayed for ? OPP
3. Whether the plaintiff is entitled for permanent injunction as prayed for ? OPP
4. Whether the present suit is legally not maintainable ?
OPD
5. Whether the plaintiff has no locus standi to file the present suit ?OPD
6. Whether the plaintiff is stopped by his act, conduct for filing the present suit ? OPD
7. Whether the plaintiff's have not come to the Court with clean hands? OPD
8. Whether the present suit is bad for mis-joinder & non-joinder as prayed for? OPP
9. Whether the present suit is not properly valued for the purposes of court fee & Jurisdiction as prayed for ?
OPD
- 10.Relief.

It has specifically been noticed in the order dated 16.04.2013 that no other issue arises or was pressed.

The Trial Court vide judgment and decree dated 05.03.2015 decreed the suit holding that the power of attorney executed by the plaintiff-respondent in favour of defendant-petitioner No.1 on 29.05.2006 stood

cancelled on 21.05.2007 and intimation of the same was sent to the petitioner vide Ex.P/5 regarding the cancelation of the attorney. However, on 11.06.2007, purportedly acting on the power of attorney dated 29.05.2006, a sale deed was executed by the defendant-petitioner No.1 herein in favour of his wife defendant-petitioner No.2. Aggrieved by the said judgment and decree passed by the Trial Court dated 05.03.2015, an appeal was preferred by the defendant-petitioners. On 04.08.2017, during the pendency of the appeal, an application was filed by the defendant-petitioners for framing of the following additional issues :

- i.) Whether the defendant-petitioner No.2 Asha Rani wife of Suraj Pal is the bonafide purchaser of the property in question with consideration and without notice ? OPD
- ii.) Whether the mutation has been sanctioned in favour of the defendant-petitioner No.2 Asha Rani on the basis of sale deed dated 11.06.2007 ? OPD
- iii.) Whether Sawinder Kaur wife of Late Gopal Singh, resident of Hussainpura West, Amritsar is a necessary party in the case ? OPD.

The said application was contested by the plaintiff-respondent. Vide the impugned order, the said application was dismissed. Aggrieved by the same, the present revision petition has been preferred.

Learned counsel for the defendant-petitioners would contend that the Trial Court did not frame proper issues inasmuch as a specific plea was raised by the defendant-petitioner No.2 that she was a bonafide

purchaser for consideration without notice and that there is no finding in this regard. It is further the contention that it was necessary also to frame an issue as to whether the mutation had been sanctioned in favour of defendant-petitioner No.2 on the basis of the sale deed dated 11.06.2007. Learned counsel would further contend that an issue was required to be framed whether Savinder Kaur, who was a subsequent purchaser, was a necessary party in the suit.

Per contra, learned counsel for the plaintiff-respondent has contended that at the time of framing of the issues the defendant-petitioners were alive to all these issues, however, no other issue was pressed as per order dated 16.04.2013.

Heard.

In the present case, the defendant-petitioners were aware about all the issues framed in the suit. However, they chose not to press any further issue at the time of framing the issues. Further the defendant-petitioners went to trial on the issues framed and led their evidence. It is only after the suit was decreed and after the appeal against the dismissal of the suit had been pending for a period of about two years that an application for framing of additional issues was filed. There is a categorical finding by the Trial Court that the power of attorney dated 29.05.2006 stood cancelled on 21.05.2007 and the defendant-petitioner No.1 herein had no power to sell the property belonging to the plaintiff-respondent. Detailed findings have been returned on the issues by the Trial Court. The learned counsel for the defendant-petitioners is unable to point out any cogent reason for not moving the application before the Trial Court during the pendency of the

suit. The present application is nothing but an endeavour to now reopen the case and to start a de-novo trial, which cannot be permitted in law.

In view of the above discussion, I do not find any infirmity or illegality in the order passed by the lower Appellate Court. The present revision petition being devoid of any merit is dismissed. Pending applications, if any, also stand disposed off.

It is made clear that any observation made herein shall not been treated as an expression of an opinion on the merits of the case.

December 02, 2022

tripti

(ALKA SARIN)

JUDGE

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO