

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

**CR-3902-2022 (O&M)
Date of decision : 12.12.2022**

M/s Golden Infrastructure Pvt. Ltd.

...Petitioner

Vs.

Rattan Singh and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Dheeraj Mahajan, Advocate for the petitioner.

MANOJ BAJAJ, J.

Petitioner (defendant No.1) has filed this revision petition under Article 227 Constitution of India to challenge the order dated 26.05.2022 passed in Civil Suit No.276 of 2014 by Civil Judge (Senior Division), Rupnagar, whereby his application seeking adjudication of issue No.9-A as preliminary issue before entering the trial, has been dismissed.

Learned counsel has argued that the plaintiff-Rattan Singh filed a suit on 18.03.2014 for possession by way of partition of suit land mentioned in the head note of plaint (Annexure P-1) claiming 1/4th share, but during the pendency of the suit, the plaintiff entered into an agreement to sell dated 10.09.2014 (Annexure P-6) with petitioner, and consequently he is left with no right or interest in the suit property to

seek partition. He submits that defendant No.1 (petitioner) filed applications dated 26.10.2021 and 02.12.2021 for dismissal of the suit being infructuous, but the said application has been dismissed by the trial Court through the impugned order and the order suffers from grave illegality and impropriety. According to learned counsel, once the agreement to sell is not disputed by plaintiff, therefore, issue No.9-A framed on the basis of the pleadings and the plea set up by defendant No.1 can be decided as preliminary issue on the basis of admission and denial to avoid the trial. He prays that the impugned order be set aside and his application dated 02.12.2021 (Annexure P-4) be accepted.

During the course of hearing, it is not disputed by learned counsel that in response to the suit and the relief claimed by the plaintiff, defendant No.1 has also set up a counter claim, whereby a decree for implementation of agreement to sell dated 10.09.2014 has been prayed for as one of the reliefs.

After hearing the learned counsel and considering the submissions, this Court finds that initially after completion of pleadings of the parties, twenty issues were framed by the trial Court, and subsequently, issue No.9-A was framed, which reads as under:-

“9A. Whether the present suit is liable to be dismissed being infructuous in view of the agreement dated 10.09.2014 executed by plaintiff in favour of defendant No.1? OPD No.1.”

The argument by the learned counsel that as the plaintiff has entered

into agreement to sell with defendant No.1, his suit for possession by way of partition is rendered infructuous, is misplaced as mere execution of agreement does not deprive the vendor with his title in the suit property. Further, the first prayer in the counter claim set up by petitioner specifically contains the grievance that the plaintiff has denied the execution of agreement to sell dated 10.09.2014, therefore, the stand of the petitioner that plaintiff has admitted the execution of agreement is contradictory to the pleadings in counter claim. Apart from it, issue No.9-A cannot be separated from the other issues relating to the agreement to sell framed by the trial Court, as it is for the counter claimant/defendant No.1 to establish its readiness and willingness to perform its part of the contract. The onus of issue No.9-A is placed upon the defendant No.1/petitioner, therefore, in the given facts and circumstances of this case, where the parties have set up claim and counter claim, the disputed facts can only be effectively decided after recording evidence.

Thus, this Court has no hesitation in holding that the application filed by petitioner defendant seeking decision of issue No.9A as preliminary issue is without any merit, and perusal of the impugned order dated 26.05.2022 reveals that the Civil Judge (Senior Division), Rupnagar has carefully examined the pleadings of the parties and material on record while dismissing petitioner's application.

This Court does not find any illegality or impropriety in the

impugned order, therefore, no case is made out for exercising the revisional jurisdiction.

Dismissed.

(MANOJ BAJAJ)
JUDGE

12.12.2022
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Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No