

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

**CR-4653-2022
Decided on:-14.11.2022**

Chanan Singh

....Petitioner

vs.

Sant Singh and others

....Respondents.

CORAM:HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Vijay Sharma, Advocate,
for the petitioner.

Mr. R.K. Shukla, Advocate,
for respondent No.1.

Mr. G.P. Vashisht, Advocate,
for respondents No.2 and 3.

HARKESH MANUJA J. (Oral)

CM-15435-CII-2022

Application is allowed as prayed for. Reply filed on behalf of
respondent No.1 is taken on record.

Registry to tag the same at appropriate place.

Main case

By way of present revision petition, challenge has been made to
an order dated 03.10.2022 passed by the court of Additional Civil Judge
(Senior Division), Samana, whereby an application dated 03.09.2022, filed
at the instance of petitioner-plaintiff, seeking re-framing/claiming of
specific issues on the point of validity of the sale deeds in question, has
been declined.

Facts leading to the present case are that respondent No.1 filed

a civil suit for possession against the petitioner, based on sale deed dated 13.12.2010 (this shall be referred to as 'Ist suit'). In the plaint, it was stated that the sale deed dated 13.12.2010 was executed in favour of respondent No.1 by respondents No.2 and 3 based on their two sale deeds dated 01.09.2010 (vasika Nos.2104 and 2105). It was further stated that respondents No.2 and 3 purchased the suit property by virtue of sale deed dated 01.09.2010 from the petitioner. In the written statement, petitioner took up the plea of fraud stating that the sale deed dated 01.09.2010 was got executed in favour of respondents No.2 and 3 fraudulently and was also bad for want of sale consideration. Issues in the Ist suit were framed on 27.05.2015. Relevant issue No.1 is reproduced hereunder for reference:-

“Whether the plaintiff is entitled to relief of possession over the suit property as prayed for? OPP”

In a separate but related development, the petitioner on being put to notice of the first suit, filed suit for declaration (herein after referred to as the 'IInd suit') challenging the two sale deeds dated 01.09.2010 (vasika Nos. 2104 and 2105) as well as 13.12.2010 (vasika No.3545), impleading all the respondents as defendants. Issues in the second suit were framed on 27.07.2015. Relevant issue No.1 in the IInd suit is reproduced hereunder for reference:-

“Whether the plaintiff is entitled to the relief of declaration as prayed for ? OPP.”

During trial, an application dated 16.11.2016 came to be filed in the first suit at the instance of respondent No.1 for claiming a specific issue pertaining to the sale deeds in question, on the point of fraud. The issue sought to be claimed/incorporated at the instance of respondent No.1

in his application is reproduced hereunder:-

“If issue No.1 is proved whether the sale deeds vasika No. 2104 and 2105 dated 01.09.2010 are result of fraud or paper transactions and without consideration? OPP

The said application was declined by the trial court vide order dated 21.07.2017. However, as the property in question in both the suits was same, thus, both the suit were consolidated vide an order of even date i.e. 21.07.2017. While two suits after being consolidated were listed for final arguments, the petitioner moved an application dated 03.09.2022 (Annexure P-6 page 67) claiming a specific issue on the validity of sale deeds in question, for want of valuable consideration besides being hit by fraud/misrepresentation. It is the said prayer made by the petitioner, which has been declined by the trial court vide impugned order dated 03.10.2022, and the same has been challenged by way of present revision petition.

It has been contended by learned counsel for the petitioner that once a plea of fraud, besides, the sale deeds being invalid for want of sale consideration was raised in the plaint, a specific issue in this regard was required to be framed, so as to adjudicate upon the rights of the parties in an effective manner. He further submits that the petitioner shall not press for grant of an opportunity to lead any evidence in case a specific issue in this regard is framed.

On the other hand, the prayer made by learned counsel for the petitioner has been strongly opposed by learned counsel appearing on behalf of respondent No.1 by submitting that the parties were fully aware of their rights as well as the case set up by them in their pleadings and once having led their evidence on the issues framed by the trial court, no such prayer for

framing of any such specific issue at the fag end of the trial could be entertained. He further submits that the entire purpose of moving this application by the petitioner was only to delay the proceedings in the suit, so as to prejudice the rights of respondent No.1, who was seeking possession, based on his sale deed dated 13.12.2010. He also submits that no challenge was ever made by any of the parties to the order dated 21.01.2017 passed by trial court in the first suit whereby similar prayer made at his instance for framing of specific issue on the plea of fraud, was declined.

I have heard learned counsel for the parties and gone through the paper book. I find merits in the contention raised on behalf of the petitioner. The trial court has failed to appreciate that the issues are in fact the backbone of a suit and the entire trial thereof is guided by the issues only. The framing of issues, therefore, has a very important bearing on the trial as well as the decision of a suit. It is only on the basis of issues that the entire controversy between the parties is placed before the court. In fact, one issue should cover only one fact or law in dispute between the parties. Each material proposition of fact or law affirmed by one party and denied by the other has to form the subject matter of a distinct issue. Besides it, Rule 5 of Order 14 enables a court to amend, add or strike out issues at any time before passing of a decree.

In the facts and circumstances of the present case, once there are specific pleadings as regards the validity of the sale deeds in question on the ground of fraud/misrepresentation as well as those being bad for want of sale consideration, specific issue needs to be framed in this regard by the trial court. Although, the issue of declaration as framed in the second suit

may also include this plead, but once, the parties are specific and categorical in their respective stand, the trial court has to be conscious while framing issues so as to decide the lis between the parties in a complete and effective manner. As the plea raised by the petitioner wherein he challenges the sale deeds in question for want of sale consideration arises from Section 54 of the Transfer of Property Act, 1881, the same is required to be answered specifically by the trial court. More than that, learned counsel for the petitioner, on instructions submits that his client will not claim/press for any evidence on the additional issues now sought to be framed. However, this shall not be construed as a bar for the respondents to avail their chance so as to lead any evidence on the additional issues.

Still further, I am not convinced with the plea raised by learned counsel for respondent No.1, as regards, no challenge having been made to the order dated 21.01.2017. Vide order dated 21.01.2017, the trial court never observed anything as regards the merits of framing of any additional issues on the point of fraud etc.; but rather, declined the prayer only on the ground that both the suits stood consolidated.

In view of the discussion made herein above, the impugned order dated 03.10.2022 is hereby set aside, consequently, the present revision petition stands allowed and the following additional issues are framed for the purpose of adjudication by the trial court:-

(i) Whether plaintiff purchased the property mentioned in the head note of the plaint vide registered sale deed dated 13.12.2010 Vasika No.3545 dated 13.12.2010 for valuable consideration of Rs.12,96,000/- from proforma defendants No.5 and 6, if so, its effect.? OPP (Sant Singh).

(ii) Whether the property mentioned in the

head note of the plaint, there exists kacha rooms, which was in use and occupation of defendants No.1 to 4.? OPP (Sant Singh).

(iii) If issues No.1 to 3 are proved, whether, the above impugned sale deeds bearing Vasika No.2104 and 2105 both dated 01.09.2010 and sale deed bearing Vasika No.3545 dated 13.12.2010 are the result of fraud, mis-representation; paper/sham transactions and without consideration, are illegal, null & void and not binding on Chanan Singh and are liable to be set aside.? OPD (Chanan Singh).

Pending application(s), if any, shall also stand disposed of.

(HARKESH MANUJA)
JUDGE

14.11.2022
sonika

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/ No