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113 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-1958-2023 (O&M)
Date of Decision: 28.03.2023

Ram Kumar

..... Petitioner

Versus

Ram Parshad (deceased) through his LRs.

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Kanwar Abhay Singh, Advocate, and
Mr. Rajesh Kumar Jangra, Advocate,
for the petitioner.

RAJBIR SEHRAWAT, J. (ORAL)

This is a petition filed under Article 227 of the Constitution of India seeking quashing the impugned order dated 21.01.2023 (Annexure P-7) passed by the Additional District Judge, Yamna Nagar at Jagadhri, whereby the application under Order 14 Rule 5 of the Code of Civil Procedure for framing the additional issue has been dismissed.

The essential argument of the learned counsel for the petitioner is that the respondent-Ram Parshad had taken Rs.20,000/- from the petitioner and had sold the land to him. The entry to this effect was made in the *bahi* of the petitioner. Accordingly, the petitioner had become exclusive owner in possession of the suit property. However, the issue was not framed on this aspect during the trial. When he approached in appeal and made a prayer for framing of issue; the lower appellate Court also dismissed the

appeal. Learned counsel has further submitted that this is the real issue; because once the petitioner is held to be the owner in possession of the suit property, then the plea of the opposite side that the petitioner occupied the property under them under a licensee; gets demolished *ipso facto*. Hence, framing of the issue was necessary.

Having heard the learned counsel for the petitioner and having perused the case file, this Court does not find any substance in the arguments raised by the learned counsel for the petitioner. Even as per the assertion of the petitioner, the ownership of the property is claimed by the petitioner on the basis of *bahi* entry which, statedly, contains a recital that the respondents have taken Rs.20,000/- and have sold the suit land to the petitioner. However, even if this entry is taken to be correct, that does not create any title to the property in favour of the petitioner, as such. The property being, undisputedly, valued more than Rs.100/-, its title could not have been transferred in favour of the petitioner except through a registered sale deed. Moreover, the Court below has also recorded that the assertion of the petitioner qua the story of paying Rs.20,000/- and purchasing the said suit land has already been negated by the Trial Court. The Appellate Court cannot resort to framing of new issues only on the asking of the parties. Framing of fresh issue by the Appellate Court can be only in a rare situation when the Appellate Court comes to the conclusion that some issue deserves to be decided by framing a separate and specific issue and by taking the evidence thereon. However, the Court below has not found any such

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requirement in the present case.

In view of the above, finding no merit in the present petition,
the same is hereby dismissed.

(RAJBIR SEHRAWAT)
JUDGE

28.03.2023
adhikari

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No