

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

CR-88-2017 (O&M)

Date of decision: 17.04.2023

GURMAIL SINGH

...Petitioner

VS

RAJESHWAR & ORS

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Rajinder Goel, Advocate,
For petitioner.

Mr. Vineet Chaudhary, Advocate,
For respondents No.2 to 7.

ARUN MONGA, J. (ORAL)

Present revision petition is to set aside impugned order dated 01.12.2016 passed by learned Civil Judge (Senior Division), Ambala, whereby application filed by petitioner-plaintiff for framing additional issue, was dismissed.

2. Succinct facts first.

2.1. Plaintiff/petitioner filed a suit for specific performance of agreement to sell dated 08.10.2004, which was executed by Rohtas Singh through his registered general power of attorney holder Rajeshwar (defendant No.1), agreeing to sell land measuring 18 Kanals out of the total land measuring 288 Kanals 9 Marlas, situated at village Saha, Sub Tehsil Saha, Tehsil and District Ambala. Said general power of attorney was registered on 30.08.2001.

2.2. Said land was agreed to be sold for a total sale consideration of Rs.4, 08,000/- out of which earnest money to the tune of Rs.3, 10,000/- was paid at the time of execution of the agreement. The date of execution of sale

deed was fixed as 18.10.2005 on which date the balance payment was also to be made.

2.3. On 11.11.2004, Rohtas Singh met with an accident in which he succumbed to the injuries suffered by him and defendants No.2 to 7 inherited his estate. Therefore, defendants No. 2 to 7, being the legal heirs of Rohtas Singh, were under legal obligation to execute the sale deed in favour of petitioner in terms of agreement to sell dated 08.10.2004. Trial Court did not frame specific issue, which arises out of objection raised by defendant No.2 with regard to power of attorney and agreement to sell. Accordingly, petitioner filed application for framing additional issue which arose out of the written statement of respondent No.2. The proposed issue which needs to be framed is as under:

“4 (a) Whether the registered power of attorney dated 28.08.2001 executed by Rohtash Singh in favour of defendant No.1 and the agreement dated 28.10.2004 executed by defendant No.1 in favour of the plaintiff on the basis of said power of attorney are forged and fabricated document? OPD.”

3. I have heard learned counsel for the parties and gone through the case file.

4. What thus emerges is a very short controversy herein as to whether the suit of the plaintiff can be effectively decided without framing specific issue *qua* defendants plea of forgery/fabrication of the ‘power of attorney’ on the basis of which agreement to sell dated 28.10.2004 was executed.

5. I am unable to persuade myself to agree with the argument canvassed by learned counsel for petitioner in view of the specific defence taken by defendants in their pleadings that alleged ‘power of attorney’ being a forged and fabricated one, cannot be relied upon for which needless to say

onus is on them to adduce evidence in order that learned trial Court gives a finding *qua* the pleadings to that extent irrespective of framing of a specific issue as prayed for by the plaintiff.

6. In this background, the issue No.1 which was framed way back on 18.08.2009, also being apposite is reproduced hereinbelow:-

“1. Whether plaintiff is entitled to a decree for possession by way of specific performance of the suit property detailed in the head note of the plaint in terms of agreement to sell dated 08.10.2004 with consequential relief of permanent injunction, as alleged? OPP”

7. A perusal of the above leaves no manner of doubt that in order to return a finding on the above issue, learned trial Court will have to necessarily deal with the defence of defendants *qua* the documents in question being forged and fabricated and even if no specific issue is framed as is sought to be now framed by way of proposed issue No.4-A, the contentions therein would be covered by issue No.1 already framed.

8. In the premise, impugned order dated 01.12.2016 does not warrant any interference and the revision petition is disposed of in terms of the observations made hereinabove.

(ARUN MONGA)
JUDGE

17.04.2023
vandana

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