
(2002) 04 DEL CK 0048
In the Delhi High Court
Case No : C.R. No. 417 of 2002

Shri Jai Karen and Others

APPELLANT

Vs

Shri Gajender Yadav

RESPONDENT

Date of Decision : 30-04-2002

Acts Referred:

Citation : (2002) 7 AD 191 : (2002) 97 DLT 995

Hon'ble Judges : Ramesh Chand Jain, J

Bench : Single Bench

Advocate : V.P. Rana, for the Appellant; Nemo, for the Respondent

Judgement

R.C. Jain, J.—This civil revision is directed against the order of the learned Additional District Judge dated 30-1-2002 by which the learned trial court has dismissed an application under Order 14 Rule 5 CPC filed on behalf of the petitioner-defendant seeking reframing/modification of existing issue No.4 and for framing 3 additional issues.

2. Learned counsel for the petitioner seeks to challenge the impugned order mainly on the ground that defendant-petitioners have raised certain specific objections and pleas in their written statement about the maintainability of the suit; plaintiff having got no cause of action for filing the suit and also about the agreement to sell land in question which is the basis of the suit being void and the subject matter of the suit agreement was covered by the provisions of Delhi Land Reforms Act 1954 and the consideration provided for in the agreement is grossly inadequate and illusory and agreement. The court existing issues framed do not take into account the said specific pleas of the petitioner-defendant.

3. On a consideration of the matter it is noted that the present suit filed by the plaintiff-respondent is for specific performance of agreement to sell and damages and on the basis of the pleadings of the parties, the trial court framed the following issues:

1. "Whether the plaintiff is entitled to a decree of specific performance of

agreement dated 27-7-99 against the defendants?

2. Whether the plaintiff is entitled to a decree of recovery of Rs. 1,45,000/- with interest in the alternative as alleged?

3. Whether the suit is not maintainable as alleged?

4. Whether the agreement in question is void as alleged, if so, to what effect?

5. Relief?

4. Application under Order 14 Rule 5 read with Section 151 CPC was moved after the plaintiff had led and concluded his evidence and when the case was at the stage of defendant evidence. The plaintiff sought the modification of issue No.4 and framing of the additional three issues as under :

Proposed Issue No.4:

"Whether the agreement in question is void agreement being not enforceable in view of the Delhi Land Reform Act as alleged, if so, to what effect?"

Proposed additional issues:

1. "Whether there is no cause of action in favor of the plaintiff and against the defendants to file the present suit?

2. Whether consideration amount shown in the agreement is illusory and not adequate as alleged, if so to what effect?

3. Whether the physical possession of the land in question was actually handed over by the defendants to the plaintiff at the time of execution of the Agreement?

5. Learned trial court has declined to consider, the application favorably mainly on the ground that the application was moved at a belated stage when the matter was fixed for defendant evidence which was aimed at delaying the proceedings in the suit. It was also stated that the issue No.4 with regard to the agreement in question being void did not require any modification.

6. This court on a consideration of the facts, circumstances and the material placed on record and the above submissions of the counsel is also of the view that although delay in filing the application or for seeking modification of issues is not a sufficient ground in itself to decline the application if on the face of the pleas of the parties and for the effective adjudication of the controversy between the parties such a modification of the issues or framing of the additional issue is required. However, the question is as to whether on the face of the facts of the case and the plea raised by the petitioner-defendant any modification of the existing issue or framing of any additional issue was called for. The answer is plain in the negative because the existing issues are wide enough in their scope so as to cover the pleas and contentions raised by the petitioner-defendant. The defendant would be free to lead any quantum of evidence in support of issue No.4 in order to show that the agreement to sell is void for the reasons stated in

the written statement. Similarly the existing issue No.3 in regard to the non-maintainability of the suit also covers the proposed additional issue No.1 and no additional issue was required to be framed. Issue No.3 does not arise from the pleadings of the parties as neither the petitioner-plaintiff has not claimed relief of possession. The defendant cannot be allowed to raise the controversy about the possession of the property in question.

7. For the reasons stated, this court is of the opinion that no infirmity, illegality or jurisdictional error is seen in the impugned order which calls for any interference by this court. Dismissed.

CM No.907/02 also stands disposed of.