

HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

C.Rev. No. 91/2007
CMP No. 98/2007

Date of Decision: 27.09.2007

Jaminder Lal ***v.*** ***Dina Nath***

Coram:

MR. JUSTICE HAKIM IMTIYAZ HUSSAIN , JUDGE

Appearing Counsel:

For Petitioner : Mr. S.S.Nanda, Advocate.

For Respondent : Mr. Rajnesh Oswal, Advocate.

i)	Whether to be reported in Press/Journal/Media	:	Yes/No
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ii)	Whether to be reported in Digest/Journal	:	Yes/No
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This revision is directed against the Order dated 19th of July, 2007 passed by Learned Sub-Registrar, Munsiff, Jammu, whereby the learned Munsiff has dismissed the application of the petitioner-defendant for framing an additional issue. In a COS No. 23/87 titled Dina Nath versus Jaminder Lal, the trial Court framed as many as three issues on 7th of March, 1987. The suit pertains to the mandatory injunction directing the defendant to hand over the vacant possession of the premises comprising of two rooms of H.No. 307, Sarwal

Colony, Jammu which are as per the plaintiff under the possession of the defendant as licensee of the plaintiff. One of the issues which arises out of the pleadings is as under:-

“1. Whether the plaintiff has purchased the suit house vide sale deed dated 22-8-78?
OPP”

The defendant has objected to it and submitted that the sale is allegedly executed by one Rattan Chand who had no right or interest in the property to execute the same. After the parties led their evidence, the defendant after about 20 years filed an application under Order 14 Rule 5 of the Code of Civil Procedure for framing an additional issue as under:-

“In case issue No.1 is proved in favour of the plaintiff whether Rattan Chand had any right or interest in the property to execute the sale deed, if no, whether sale deed confer any right, title or interest on the plaintiff over the property? OPP”

The trial Court considered the prayer of the petitioner-defendant, but found that there was no merit in the same. By an Order dated 19th of July, 2007, the trial Court, therefore, rejected the prayer and listed the case for final arguments.

Aggrieved of the said Order of the learned trial Court, the petitioner has through the medium of

present revision petition, challenged the writ on various grounds *inter alia* that the trial Court by not framing the issue has committed material irregularity. It is alleged that in order to determine the matter in controversy between the parties, it was obligatory on the court to frame an additional issue as proposed by the petitioner.

Heard. I have considered the matter.

I have gone through the well reasoned order passed by the learned trial court. I find no illegality or irregularity in the order. The trial court has dealt with the issue in detail. It has taken note of various aspects of the matter and while rejecting the application has rightly come to the conclusion that the issues framed in the case based on the pleadings of the parties, also cover the assertions as made by the petitioner in the application filed to the trial Court. The trial Court has in this behalf observed as under:-

“Considering the above stated respective contentions of the parties to the suit it becomes ample clear that the issues framed in the case which are mentioned hereinabove are based on the pleadings of the parties and also cover the assertions of the one side and their denial by the other side. The issue sought to be framed is fully covered in the issues already framed because the defendant was obliged to lead evidence in rebuttal to issue No.1 wherein he could have easily and validly put forth

his claim and would have denied the right of the Rattan Chand for executing the sale deed.

It may also be relevant to point out that onus to prove the issue No.1 was on the plaintiff which means that it was for the plaintiff not only to prove that he has purchased the suit property from Rattan Chand vide sale deed dated 28.8.1978 but also to prove that the same had conferred a legal title upon the plaintiff and to this, the defendant was obliged to prove that infact no sale deed was executed in favour of the plaintiff by the said Rattan Chand and even if the same was executed it had no legal effect. Moreover, the assertion of the defendant that the sale deed is fictitious is a balled assertion because it has no where been pleaded in the written statement as to how and in what respect the same is fictitious. There are no specific allegations as to how the sale deed is fictitious and the only contentions made by the defendant in the written statement is that the same is a fictitious one and nothing more. Besides this the defendant/applicant was also obliged to prove that he is the owner of the suit property by virtue of a Gift Deed, because a specific issue has also been framed.”

It was vehemently argued by the learned counsel for the petitioner that the additional issue as prayed by the petitioner was a material issue to determine the actual controversy between the parties. It is alleged by the defendant that Rattan Chand who has executed the Sale Deed dated 28th of August, 1978 had no powers to enter into such Sale Deed, as such, the Sale Deed even if executed had no legal effect.

I find the contentions of the learned counsel cannot be allowed as the trial Court has rightly

observed that onus to prove the issue was on the plaintiff which means that it was for him not only to show that he has purchased the suit property from Rattan Chand but also to show that same had conferred a legal title upon him.

Since a well reasoned order has been passed by the learned trial Court, I do not find any ground to interfere with it. Revision is, accordingly, dismissed. The trial Court is directed to proceed with the case and expedite it. The parties shall appear before the trial Court on 8th of October, 2007.

Order accordingly.

(**Hakim Imtiyaz Hussain**)
Judge

JAMMU
27.09.2007
** Pawan Chopra **