

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

Civil Revision No.2566 of 2015

Date of decision: 10.04.2015

Smt. Manjit Kaur

... Petitioner

versus

Balbir Singh and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Karan Bhardwaj, Advocate,
for the petitioner.

1. Whether reporters of local papers may be allowed to see the judgment ? **Yes.**
2. To be referred to the reporters or not ? **Yes.**
3. Whether the judgment should be reported in the digest ? **Yes.**

K.Kannan, J. (*Oral*)

1. The suit for specific performance was rested on a plea that the first defendant had committed a breach of obligation in the agreement and he had wrongfully sold the property to the second defendant. The trial Court decreed the suit as prayed for. The purchaser appears to have filed an appeal and the vendor has filed a cross-objection in such an appeal. Both the appeals were allowed holding that the plaintiff had not established his readiness and willingness and the decree granted was erroneous. The plaintiff preferred RSA No.148 of 2011 against the appellate Court decree setting aside the judgment of the trial Court and the appellate Court

framed the following question of law as substantial for consideration:-

“Whether finding of the lower appellate court that plaintiff has not been ready and willing to perform his part of the contract and that defendant no.2 is bona fide purchaser of the suit land is perverse and illegal and is based on misreading and misapplication of evidence on record?”

The court found that the judgment of the lower appellate Court was erroneous and answered the point in favour of the plaintiff. The plaintiff, who was successful in securing the decree by restoration of the trial Court decree, has moved the trial Court for enforcement of the decree. The vendor is before this court to contend that when her own appeal before the lower appellate court succeeded on her plea that the plaintiff had not proved readiness and willingness, the decision must be taken as having obtained its finality when the plaintiff chose to file only a single RSA against the appellate court without filing the appeal against the cross objection which was allowed.

2. The contention made is untenable in law and cannot survive a moment's judicial scrutiny. In the first place, the defendant had no right to file a cross objection before the lower appellate court. If the lower appellate court had allowed for such a

consideration, it was itself an illegal exercise of jurisdiction. The cross objection can only be an objection to the appeal filed which is against the respondent. The cross objection cannot be filed in an appeal filed by a co-defendant by another defendant. The very manner of cross objection loses its meaning if both the appeals were canvassing for the same right and a cross objection was not really a cross objection against the appellant but a cross objection against a co-respondent in appeal. I am merely setting this out to fend off the belief that the appellate Court which set aside the judgment of the trial Court as regards the finding of readiness and willingness, it become final and if it was not challenged by an independent RSA by the plaintiff, the finding in the cross objection would obtain finality.

3. There is a further fallacy in the whole argument that there was a requirement to file an appeal against the cross objection. No such appeal is necessary. The finding in a cross objection cannot operate as *res judicata* if no cross appeal had been filed. There was only one appeal necessary if the judgment was in one single appeal and a decision in cross objection will also be added in the grounds of appeal in the appeal filed by the plaintiff against the decision in the appeal filed by the purchaser. Consequently, the argument that the decision of the lower appellate court in the cross objection filed had become final and operated a *res judicata* is untenable.

4. The further argument that there should have been two appeals betrays a wrong understanding of law, for, two appeals would be necessary, if only, if there are two suits. Even if there had been two independent appeals and there was no cross objection, it is sufficient if one appeal is filed comprehensively, since the appeals would be taken as a decision in a single case if there were no two suits filed. Consequently, the decision of the High Court which dealt with the substantial question of whether the plaintiff had proved his readiness and willingness and whether the sale by the vendor to the subsequent purchaser was valid must be taken as setting aside the finding given in cross objection by the lower appellate court.

5. The attempt of the petitioner is literally to evade the effect of the decision of the High Court and to come by with frivolous pleas. The civil revision is totally misconceived and wholly without merits. It is vexatious and dismissed. I spare the revision petitioner of being mulcted with costs only because the revision petition is being dismissed at the stage of admission itself.

(K.KANNAN)
JUDGE

10.04.2015
sanjeev