

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

**SAO No. 44 of 2015 (O &M)
Date of Decision : 30.7.2015**

Sh.Piare Lal Sharma (deceased) through LRsAppellants

Versus

Mahesh Kumar and othersRespondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI

Present:- Mr. S.K. Bawa, Advocate, for the appellants

None for the respondents

M.M.S. Bedi, J.

Respondent No. 9 is not present despite service whereas other respondents are not served.

Mahesh Kumar-respondent No. 1 had filed a suit for specific performance of an agreement to sell dated 28.7.2004 pertaining to house in dispute with late Piare Lal Sharma, who was predecessor in interest of the defendants/appellants. The trial Court dismissed the suit under Order 17 Rule 3 CPC because neither any evidence was produced by plaintiff/respondent No.1 or the defendants/appellants. The plaintiff/respondent No.1 preferred an appeal, which has been disposed of vide impugned order dated 7.5.2015 by setting aside the judgment of the trial Court and remanding the case to the trial Court for adjudication in accordance with law by giving two effective opportunities to plaintiff/respondent No. 1 to adduce evidence on payment of costs of ₹ 2000/-to the defendants/

appellants. Aggrieved by the said order, the present second appeal has been filed.

Learned counsel for the appellants has submitted that the lower Appellate Court has illegally remanded the case and granted opportunity to plaintiff/respondent No.1 to produce evidence. He has argued that plaintiff/respondent No.1 has played a fraud by fabricating a document of the deceased father of the present appellants. As such, the suit had been dismissed.

I have considered the arguments advanced by learned counsel for the appellants and gone through the facts and circumstances of the case. The plea of the defendants/appellants that plaintiff/respondent No.1 had fabricated any document or played fraud can be finally determined by giving an opportunity to plaintiff/ respondent No.1 as well as to the defendants/appellants. The interest of justice will be adequately met in case plaintiff/respondent No.1 is given opportunities as directed by the lower Appellate Court to prove his plea in suit for specific performance.

Learned counsel for the appellants has informed that the matter is being taken up by the trial Court as per the directions of the lower Appellate Court.

Since the matter is lingering on after remand, I am of the considered opinion that the lower Appellate Court has jurisdiction under Order 43 Rule 1A CPC to determine the legality of the order which is not described as appealable order under Order 43 CPC. In the interest of justice giving fair opportunity to plaintiff/respondent No.1, is in consonance with the rules of natural justice. The rights of the defendants/appellants for

expeditious disposal of the case has been safeguarded. Only two opportunities will be granted to plaintiff/respondent No.1.

In view of the said circumstances, I do not find any ground to interfere in the order passed by the lower Appellate Court which appears to be just and fair order.

However, it is again clarified that plaintiff/respondent No.1 will abide by the conditions imposed by the lower Appellate Court and will not be given any opportunity beyond the directions passed by the lower Appellate Court.

The suit will be concluded expeditiously by giving fair opportunity to the defendants/appellants to produce their evidence in support of the pleas taken up in the written statement.

(M.M.S. BEDI)
JUDGE

30.7.2015
Ashwani