

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

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SAO-50-2015 (O&M)

Date of Decision:18.09.2015

GURPREET SINGH

... Appellant

Versus

BALKAR SINGH

... Respondent

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. G.S. Saini, Advocate
for the appellant.

RAJ MOHAN SINGH, J. (Oral)

[1]. Suit of the plaintiff was decreed vide judgment and decree dated 01.11.2013 by Civil Judge (Junior Division), Ferozepur. Appellant Court has remanded the case back to the trial Court by accepting the appeal and by setting aside the judgment and decree of the trial Court with a direction to decide the case afresh after affording reasonable opportunities to the defendant to cross examine PW-2 Gurmail Singh and PW-4 Kundan Singh. The aforesaid Gurmail Singh and Kundan Singh are attesting witnesses to the agreement to sell. Examination-in-Chief of these witnesses were recorded on 21.01.2010 and 21.07.2011 respectively. On 04.10.2012, both these witnesses were recalled for cross examination, but cross examination was not done despite opportunity. In order dated 04.10.2012, no PW is shown present and on request, case is shown to have been adjourned for 20.01.2013. Non presence of these witnesses i.e. PW-2 Gurmail singh and PW-4 Kundan Singh

was reflected in the order dated 04.10.2012. Therefore, it is thought appropriate to recall the aforesaid witnesses.

[2]. Examination-in-chief of the defendant was recorded but it was not tendered for cross examination and the evidence of the defendant was closed. Order 17 Rule 1 CPC even though couched in such a language but it is not mandatory. Apparently, plaintiff himself availed 13 opportunities to lead his evidence and it is not justified to close the evidence of the defendant just after providing 3 opportunities, particularly in view of order dated 04.10.2012, wherein presence of PW's was not recorded.

[3]. Lower Appellate Court has found as a matter of fact that closing of defendant evidence only after 3 opportunities is not justified and in view of aforesaid, remand would facilitate the Court to arrive at just decision after providing reasonable opportunities to the defendant.

[4]. In view of aforesaid, remand by the Appellate Court is not suffered with any illegal and inherent jurisdictional error. Consequently, the present appeal is dismissed.

September 18, 2015
prince

(RAJ MOHAN SINGH)
JUDGE