

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

I.

Regular Second Appeal No.4527 of 2014 (O&M)

Date of decision: 21.4.2015

Rusbat Ali and another

... Appellants

Versus

Walideen and others

... Respondents

II.

Regular Second Appeal No.2316 of 2014 (O&M)

Wali Deen

... Appellant

Versus

Rusbat Ali and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Sanjay Verma, Advocate,
for the appellant in RSA No.4527 of 2014.

Mr.R.K.Dhiman, Advocate,
for the appelant in RSA No.2316 of 2014.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

CM No.10495-C-2014

CM is allowed and the delay of 82 days in re-filing the appeal

is condoned for the reasons set out in the application.

CM No.10496-C-2014

The delay of one day in filing the appeal is condoned for the reasons mentioned in the application.

RSA No.4527 of 2014

This order will dispose of both the above connected appeals as common questions are involved therein.

Having regard to the prayer made in the suit for declaration as to title of plaintiffs being owners in possession of their share in the suit property as fully described in the prayer clause; and the further prayers for declaring the sale deed dated January 12, 1999 as illegal, null and void and not binding on the rights of the plaintiff; and with the further for restraining the defendants from interfering in the peaceful possession of the plaintiffs together with the fact that the suit was only partly decreed to the extent of setting aside the sale deed, then although, the decree has been upheld in appeal and to the extent of setting aside the sale deed, no interference is called for in this second appeal with respect to the status of the sale deed. Notwithstanding the above, it is found that the trial Court has failed to opine on the first prayer as to declaration of rights of the plaintiffs to the extent indicated in the prayer clause there is an error which gives rise to a substantial question of law by omission to answer the prayer. The prayer having not been addressed by the trial Court as well as by the learned lower appellate Court, then there has been occasioned an apparent failure to do justice between the parties which calls for intervention to cause the curing of the defect in the proceedings by a remand of the matter and to seek a report from the learned lower appellate Court with respect to the main

prayer remaining with respect to the declaration sought on the question of title and share in the suit property. Learned counsel are *ad idem* that this is the only way out in order to serve the ends of justice. The plaintiff cannot be compelled in law to institute a fresh suit to seek the same declaration made in the previously instituted suit. Consequently, the appeal is allowed to the extent of remand on the question left without returning findings on the point which has passed sub silentio. Notwithstanding the remand directions, the findings qua the sale deed will govern the rights of the parties and to that extent the findings are affirmed.

Since no fresh evidence is required to be adduced, nor would be allowed by this Court, the matter is remanded to the learned first appellate Court that failed to exercise jurisdiction vested in it in not correcting the error apparent, that is, to enter upon and decide the question as to the rights of the parties with respect to prayer-I in the suit and declare them in accordance with law.

Parties are directed to appear before the learned Additional District Judge, Yamunanagar at Jagadhri on May 15, 2015.

(RAJIV NARAIN RAINA)
JUDGE

April 21, 2015

Paritosh Kumar