

SAO No. 50 of 2009(O&M)

In the High Court of Punjab and Haryana at Chandigarh

SAO No. 50 of 2009(O&M)

Date of Decision: 30.5.2016

Ajmer Singh

---Appellant

versus

Randhir Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr.G.C.Dhuriwala, Advocate
for the petitioner**

**Mr.Daldeep Singh, Advocate
for respondent No. 1**

- 1. Whether Reporters of local papers may be allowed to see the judgment?**
- 2. To be referred to the Reporter or not?**
- 3. Whether the judgment should be reported in the Digest?**

Rekha Mittal, J.

The present appeal has been directed against the judgment dated 25.8.2009 passed by the Additional District Judge, Sangrur whereby

the appeal preferred by Randhir Singh respondent No. 1/defendant No. 1 against the judgment and decree dated 13.10.2003 passed by the Additional Civil Judge (Senior Division), Malerkotla has been allowed, the judgment and decree passed by the trial court was set aside and the matter has been remitted to the trial court to decide the case afresh after returning findings on additional issue No. 1-A framed by the appellate court.

Counsel for the appellant/plaintiff has submitted that as the trial court has framed a comprehensive issue i.e. Issue No. 1 “whether the plaintiff is entitled to possession by way of specific performance of agreement for sale dated 22.7.1995? OPP” and plea of the respondent/defendant in regard to the agreement being without consideration would be in rebuttal to evidence adduced by the appellant to establish issue No. 1, neither any additional issue was required to be framed nor framing of additional issue No. 1-A namely “whether the defendant received Rs. 8 lacs from the plaintiff as earnest money?OPP” can justify setting aside the judgment and decree passed by the trial Court and remitting the matter to the trial court for decision afresh. Another submission made by counsel is that even if the appellate court felt necessity of framing of additional issue, the court, at best, can call for a report from the trial court

on the additional issue instead of setting aside the judgment and decree that too without adverting to the findings recorded by the trial court on the issues already framed and setting aside those findings.

Counsel for respondent No. 1, on the contrary, has supported the impugned judgment with the submissions that the alleged agreement to sell is without consideration and the trial court has not framed a specific issue in respect of plea raised by the respondent in this regard, therefore, no fault can be found in the impugned judgment passed by the appellate court framing an additional issue and remitting the matter to the trial court for adjudication afresh.

I have heard counsel for the parties, perused the paper book, judgment passed by the trial court and the judgment impugned in the appeal.

The appellant/plaintiff filed a suit for specific performance of agreement to sell dated 22.7.1995 with the allegations that Randhir Singh defendant No. 1 agreed to sell the suit land measuring 31 bighas 12½ biswas i.e. half share of land measuring 63 bighas 5 biswas alongwith share in the 7.5 H.P. Motor, khal bore, passage and rights appurtenant thereto situated at village Hathoa Tehsil Malerkotla at the rate of Rs. 30,000/- per bigha and received an amount of Rs. 8 lacs towards earnest money on 22.7.1995. The

sale deed was agreed to be executed up to 25.6.1996 on payment of balance sale consideration. It is averred that the appellant/plaintiff always remained ready and willing to perform his part of the agreement but the defendant committed breach thereof.

Randhir Singh defendant No. 1 filed the written statement, resisted claim of the plaintiff, denied execution of the agreement, receipt of earnest money and his liability to execute and register the sale deed in favour of the plaintiff on the basis of agreement to sell propounded by the plaintiff.

The learned trial court framed six issues including relief, detailed in para 9 of the judgment passed by the trial court. Issue No. 1 was framed with regard to entitlement to possession by way of specific performance of agreement for sale dated 22.7.1995, the onus thereof was laid upon the plaintiff. Another issue 'whether the alleged agreement to sell dated 22.7.1995 is forged and fabricated document, If so, to what effect and the onus thereof was cast upon the defendant. In view of two issues (issue Nos. 1 and 5) framed by the trial court, the question of the agreement being without consideration would certainly be covered within the ambit and purview of comprehensive issue No. 1 as well as issue No. 5. The first

appellate court without correctly and properly appreciating the aforesaid issues, in a hurry to dispose of the appeal, framed another issue to find a way out to set aside the judgment and decree passed by the trial court and remit the matter to the trial court for adjudication afresh. The way the court of appeal has proceeded to dispose of the appeal cannot stand the test of judicial scrutiny, therefore, the judgment impugned cannot be allowed to sustain and accordingly set aside. The order passed by the appellate court framing of an additional issue, setting aside the judgment and decree passed by the trial court and remitting the matter to the trial court for decision afresh, is ordered to be set aside. As a consequence, appeal is restored on the board of the first appellate court for decision, in accordance with law.

Nothing stated in this order shall be construed as an expression of opinion on merits of the case.

Parties through their counsel are directed to appear before the first appellate court on 18.7.2016.

(Rekha Mittal)
Judge

30.5.2016
PARAMJIT