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

RSA-3909-2012 (O&M)

Date of decision : 23.02.2016

State of Haryana and another

...Appellants

Versus

Hakam Ali and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ashok Singla, Addl. A.G., Haryana.

Mr. S.S. Dinarpur, Advocate
for respondent Nos.1 and 2.

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

AMIT RAWAL, J. (ORAL)

CM-10527-C-2012

For the reasons stated in the application which is supported by an affidavit, the delay of 285 days is condoned.

CM stands disposed of.

RSA-3909-2012

The appellants-defendants are aggrieved of the judgment and decree dated 18.08.2011, whereby the suit filed at the instance of the respondents-plaintiffs has been decreed.

Mr. Ashok Singla, Addl. A.G., Haryana, submits that the judgment and decree of the lower Appellate Court is primarily based upon the finding rendered by the Single Bench of this Court in **“Rattan Singh and another V/s Chief Settlement Commissioner Haryana and others” 1978 PLJ 47**, where a person dealing with a proposition that purchases the property from the allottee and whose allotment has been cancelled, as to whether they are entitled to take the benefit of Section 41 of the Transfer Property Act or not?, in essence, the aforementioned judgment protected such type of vendees, however, the aforementioned view of the Single Bench was adopted while remanding back the matter to the Arbitrator and the Arbitrator has rendered the finding in view of the Full Bench Judgment of this Court in **“Smt. Niranjana Kaur and others V/s The Financial Commissioner, Revenue & Secretary to Government, Punjab and others” 2010 (4) RCR (Civil) 610**, where it has been held that once the allotment has been cancelled, the subsequent vendee cannot take the benefit of Section 41 of the Transfer of Property Act.

Mr. S.S. Dinarpur, learned counsel appearing on behalf of respondent Nos.1 and 2 submits that other arguments were also raised before the Lower Appellate Court against the judgment and decree of the trial Court including one which has been now raised and therefore, it had been deprived of the right of the first appeal, in case, the judgment and decree of the lower Appellate Court is set aside on this point alone.

I have heard the learned counsel for the parties and appraised the paper book and of the view that since the suit for declaration at the instance of the subsequent vendee, who is stated to have purchased it from the vendee, who further purchased from allottee, whose allotment has been cancelled, certain piece of oral and documentary evidence is required to be looked into by the

lower Appellate Court over and above the proposition of law, as has been noted by Mr. Ashok Singla.

In view of the aforementioned facts, the judgment and decree dated 18.08.2011 of the lower Appellate Court is hereby set aside and the matter is remitted back to the lower Appellate Court to decide the controversy afresh, by considering all the grounds including memorandum of appeal filed under Section 96 of the Code of Civil Procedure including the view expressed by the Full Bench and the Single Bench of this Court.

The parties are directed to appear before the concerned lower Appellate Court on 15.03.2016. It is expected that the lower Appellate Court shall decide the matter as expeditiously as possible within a period of four months from the receipt of the certified copy of this Court.

With the aforementioned observations, the appeal stands disposed of.

23.02.2016
yogesh

(AMIT RAWAL)
JUDGE