

**SAO No. 65 of 2013**

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**In the High Court of Punjab and Haryana at Chandigarh**

**SAO No. 65 of 2013(O&M)**

**Date of Decision:31.5.2016**

**Kulbir Singh Sandhu**

**---Appellant**

**vs.**

**Rupinderbir Kaur and others**

**---Respondents**

**Coram: Hon'ble Mrs. Justice Rekha Mittal**

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**Present:** Mr.Kanwalvir Singh Kang, Advocate  
for the appellant  
Mr. Maninder Singh, Advocate  
for the respondents

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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?

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**Rekha Mittal, J.**

The present appeal has been directed against the order dated

5.7.2013 passed by the Additional District Judge, Amritsar allowing application of the respondents/plaintiffs under Order 41 Rule 27 of the Code of Civil Procedure (in short “CPC”) and remittance of the case to the trial court for adjudication afresh after recording additional evidence.

Ravinder Singh (since deceased represented by his legal representatives, respondents) filed a suit for possession by way of specific performance of the agreement to sell dated 14.5.1999 purported to be executed by the appellant/defendant in respect of plot measuring 89.22 square yards, detailed in head note of the plaint. On the basis of evidence adduced by the parties, the learned trial court recorded findings on Issue Nos. 1 to 3 against the plaintiffs and the suit was ordered to be dismissed with costs.

Feeling aggrieved by the judgment and decree passed by the trial court, the matter was carried in appeal by the legal representatives of the deceased. They filed an application under Order 41 Rule 27 CPC for examination of Rupinderbir Kaur widow of the deceased plaintiff by way of additional evidence. The application was allowed by the Court of Appeal vide order dated 5.7.2013 but subject to payment of costs and with a

condition that the trial court shall conclude evidence of the parties by granting two adjournments each and to decide the case within statutory period of three months. As a consequence of allowing application for additional evidence, the Court accepted the appeal, set aside the judgment and decree passed by the trial court and the matter was remitted to the trial court for decision afresh. It was held that since rights of the parties will be affected after recording statement of Rupinderbir Kaur as her own witness, her testimony is to be recorded by the lower court which is only possible if the present case is remanded to decide afresh after recording additional evidence.

After arguing for some time, counsel for the appellant has submitted that he has got no objection if Rupinderbir Kaur is examined by way of additional evidence but the respondents by taking advantage of order of remand want to re-open the entire case and examine many other witnesses besides Rupinderbir Kaur. It is further submitted that the appeal may be disposed of with a direction to the trial court that examination of no other witness in pursuance of the directions issued by the appellate court shall be taken into consideration on behalf of the respondents.

Counsel for the respondents, on the contrary, would urge that he has got no objection if only testimony of Rupinderbir Kaur examined by way of additional evidence besides evidence already adduced by the parties before remand and evidence adduced by the appellant to rebut the additional evidence, if any, is taken into consideration for disposal of the suit.

I have heard counsel for the parties and perused the paper book with their able assistance.

Be that as it may, as the appellate court has allowed examination of Rupinderbir Kaur alone by way of additional evidence, the respondents in no circumstances can examine any other witness by taking benefit of order of remand unless after remand of the case, their prayer for additional evidence is allowed by the trial court. In view of the submissions made by counsel for the parties, the appeal stands disposed of with a direction to the trial court that only Rupinderbir Kaur would be examined by the respondents by way of additional evidence in the light of order passed by the appellate court and thereafter the learned trial court shall decide the suit on the basis of evidence already adduced before remand plus additional evidence i.e. statement of Rupinderbir Kaur and evidence, if any,

adduced by the appellant to rebut the testimony of Rupinderbir Kaur unless any other evidence is allowed to be adduced by way of a separate order passed in accordance with law.

For the foregoing reasons, the appeal stands disposed of in the aforesaid terms. No order as to costs.

**(Rekha Mittal)**  
**Judge**

**31.5.2016**  
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