

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

RSA No.215 of 2015 (O&M)

Date of decision : 18.12.2018

Bagicha Singh and others

...Appellants

Versus

Darshan Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. K.B. Raheja, Advocate for the appellants.

ANIL KSHETARPAL, J. (ORAL)

CM No.18491-C of 2018

Prayer in the application is for placing on record additional evidence.

Application is allowed.

Main case

In spite of service, respondent has not chosen to appear.

The plaintiffs-appellants are in the Regular Second Appeal against the judgments passed by both the Courts below.

In the present case, the plaintiffs claim that they have purchased the property from Smt. Narinder Kaur who in turn purchased the property from Darshan Singh. Darshan Singh had challenged the sale deed executed by Narinder Kaur who was proceeded ex parte. The sale by Darshan Singh in favour of Narinder Kaur was set aside by an ex parte judgment dated 13.02.2008.

Learned counsel for the appellants has contended that after ex parte judgment passed on 13.02.2008, an application under Order 9 Rule 13 CPC was filed which was dismissed by the trial Court, affirmed in appeal by the First Appellate Court. However, in revision petition, this Court on 18.02.2015 set

aside the ex parte judgment and decree dated 13.02.2008.

Learned counsel has further submitted that after setting aside of the ex parte decree, suit for declaration filed by Darshan Singh against Narinder Kaur was dismissed on 28.05.2015 and the appeal was filed by Darshan Singh on 01.12.2016. Learned counsel has further pointed out that Regular Second Appeal No.3280 of 2017 is pending in this Court.

On reading of the judgments passed by the Courts below, it is apparent that the Courts have relied upon judgment and decree dated 13.02.2008 which no more exist, having been set aside by this Court vide order dated 18.02.2015.

Keeping in view the aforesaid facts, this Court is of the considered view that the Courts below need to re-examine the entire matter in view of the subsequent development noticed above.

Accordingly, the judgments passed by the Courts below are set aside. The case is remitted back to the learned trial Court for re-decision after taking into consideration the subsequent orders/judgments passed by the Courts.

The plaintiffs through their counsel are directed to appear before the trial Court on 14.01.2019. Learned trial Court would issue notice to the respondents before proceeding with the suit.

In view of the above, the present Regular Second Appeal is disposed of.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

18.12.2018

Pawan

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned:- Yes/No
Whether reportable:- Yes/No