

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

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**RSA No.4098 of 2015 (O&M)
Date of Decision : 20.12.2018**

Sham Dass

..... Appellant

Versus

Smt. Asha Rani

..... Respondent

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr.Suveer Sheokand, Advocate
for the appellant.

Mr. G.R.Bajaj, Advocate
for the respondent.

AJAY TEWARI, J.

This appeal has been filed against the concurrent judgments of the Courts below dismissing a suit for specific performance filed by the appellant.

The primary ground taken by the Courts was that the original agreement to sell was never placed on the record. Counsel for the appellant has accepted that there was a lapse on the part of the appellant but the fact of the matter is that the original agreement to sell was part of the criminal file in an FIR which the appellant had lodged against the respondent but at one stage the appellant had moved an application for summoning the original criminal file to prove the original agreement to sell and that application was allowed and the Ahlmad was summoned but when he appeared in witness he stated that he could not bring the file because it had gone to the Court of the Sessions Judge.

As per the counsel for the appellant the Court should have then given atleast one opportunity to the appellant to summon the file from the Court of the Sessions Judge but the Court proceeded to decide the issue. Even along with the appeal the appellant had moved an application for additional evidence but that was dismissed by the appellate Court by stating that even the application before the trial Court had been moved belatedly and therefore, there was no ground to lead additional evidence. As per counsel for the appellant in these circumstances, the application for additional evidence should have been allowed and the appellant should have been permitted to prove the agreement to sell.

Counsel for the respondent has argued that even the action of the trial Court in allowing the application to summon the file was infact illegal because the appellant had prayed that he wanted to summon the file in rebuttal evidence whereas the onus of proving the agreement to sell was on the appellant and therefore, he could not have led any evidence on it in rebuttal.

Counsel for the appellant has urged that even if the application was allowed at the stage of rebuttal evidence yet once it had been allowed the Court should have granted one more opportunity to lead the evidence. As per him the agreement to sell was a crucial document on which the entire case of the appellant rested and in its absence the Court could not effectively decide the matter.

In my opinion, the appellate Court should have allowed the application for additional evidence. The judgment of the lower appellate

Court is set aside and the matter is remanded back to the District and Sessions Judge, Ludhiana. The record be sent to the Court of District and Sessions Judge, Ludhiana. Parties through counsel are directed to appear before the District and Sessions Judge, Ludhiana on 28.01.2019 who can try the case himself or mark the same to other competent Court.

Appeal stands disposed of.

Since the main case has been decided, the pending Civil Miscellaneous Application, if any, also stands disposed of.

20.12.2018
pooja sharma-I

(AJAY TEWARI)
JUDGE

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