

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

**RSA No.877 of 2015 (O&M)
Date of Decision:01.12.2018**

Tarsem Chand ...Appellant(s)

Versus

Prem Kumar Bansal and others ...Respondent(s)

RSA No.1854 of 2015 (O&M)

Sunder Pal ...Appellant(s)

Versus

Tarsem Chand and others ...Respondent(s)

RSA No.1936 of 2015 (O&M)

Gora Lal ...Appellant(s)

Versus

Tarsem Chand and others ...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Rajat Bansal, Advocate for the appellant in
RSA No.877 of 2015 and for respondent No.1 in
RSA No.1854 of 2015.
Mr.Tribhawan Singla, Advocate for the appellant(s) in
RSA No.1936 and 1854 of 2015.
Mr.Sherry K. Singla, Advocate for
respondents No.1 to 3 in RSA No.877 of 2015.

ANIL KSHETARPAL, J.

By this judgment, RSA Nos.1854 of 2015, 1936 of 2015 and
877 of 2017 shall stand disposed of , as all these three appeals are arising
from a common judgment passed by the learned first appellate court without
going into detailed facts which have already been noticed by the learned

trial court as well as by the first appellate court and nature of order which this Court proposes to pass, it is considered appropriate to record short order.

Plaintiff Tarsen Chand, who is appellant in RSA No.877 of 2015, filed a suit for declaration to the effect that he is owner in possession of the property pursuant to a family settlement followed by a memorandum of family settlement dated 5.4.2003 which had been partly acted upon and the properties between the family members were divided, whereas some of the defendants had filed counter claim. It is further case of the plaintiff that he was required to pay a sum of Rs.50,00,000/- to defendant No.1 as per the memorandum of family settlement.

The suit filed by the plaintiff was dismissed, whereas one counter claim filed by one of the defendants was partly decreed. Three appeals were preferred against the judgment passed by the learned trial Court. One of the issue, which arose for consideration before the first appellate court, was whether the amount of Rs.50,00,000/-, as alleged by the plaintiff, has been paid against the receipts issued or not. However, the learned counsel for the parties could not draw attention of the Court to the findings of the first appellate in this regard.

On careful perusal of the judgment passed by the learned first appellate court, it is apparent that the learned first appellate court has practically reproduced the entire evidence but thereafter concluded without adjudicating upon the correctness of the plea of the plaintiff with regard to the payment of Rs.50,00,000/- to defendant No.2.

As per Section 96 of the Code of Civil Procedure as interpreted

by Hon'ble the Supreme Court, the learned first appellate is required to cull out the issues which required determination and thereafter decide those issues while critically analysing the reasons given by the learned trial court. In the present case, the judgment passed by the learned first appellate court does not fulfill the aforesaid requirement.

This Court is intentionally not dealing with the case on merits lest it may prejudice the interest of any of the party. All these three appeals are allowed. The judgment and decree passed by the learned first appellate court are set aside and the learned first appellate court is directed to re-decide the appeal afresh without being influenced by the previous judgment passed by it or the order passed by this Court.

Pending application(s), if any, shall also stand disposed of, in terms thereof.

Parties through their counsels are directed to appear before the learned first appellate court on 10.1.2019.

01.12.2018
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No