

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

SAO No. 9 of 2014 (O&M)

Date of Decision: December 10, 2018.

Gurdeep Singh

.....APPELLANT

VERSUS

Balbir Singh @ Dalbir Singh and others

.....RESPONDENTS

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Krishan Singh Dadwal, Advocate
for the appellant.

Mr. Sanjay Majithia, Sr. Advocate with
Mr. Inderjeet Singh, Advocate
for respondents No. 1 and 2.

SURINDER GUPTA, J.(Oral)

Heard.

Learned counsel for the appellant has confined his submission only to this extent that after framing additional issue no.6A, the Ist Appellate Court instead of setting aside the judgment of trial Court could call the report on this issue and decide the appeal on merits.

The plaintiffs/respondent Nos.1 to 3 filed suit seeking relief of declaration to the effect that sale deeds dated 25.11.1998 and 26.11.1998 are illegal, null and void and also sought the relief of joint possession of the land in dispute and recovery of Rs.6,84,000/- with interest @ 24% per annum.

Learned Civil Judge (Junior Division), Hoshiarpur decreed the suit to the extent of allowing the relief of recovery of consideration of the sale deeds dated 25.11.1998 and 26.11.1998 along with interest @ 6% per annum from the date of decree till its realization.

The plaintiffs filed appeal against the judgment and decree while no appeal was preferred by the defendants/respondents No. 1 to 5.

In appeal, learned Ist Appellate Court framed issue No.6A as follows:

6A *Whether respondents No. 2 and 3 are bonafide purchasers in good faith for consideration in respect of the property in dispute subject matter of sale deeds dated 25.11.1998 and 26.11.1998? OPD.*

On framing of this issue, the judgment and decree passed by the lower Court was set aside and the case was remanded with direction to decide the suit afresh.

It is evident that judgment and decree of the trial Court was not challenged in appeal by the defendants/respondents. The issue that, whether respondent Nos.2 and 3 are bona fide purchasers of the suit property was not framed by the trial Court. It will be a question to be seen as to whether the findings on this issue can result in setting aside the judgment and decree passed by the trial Court. Once the decree passed by the trial Court has not been challenged in appeal it has attained finality. In these circumstances, the Ist Appellate Court could call for the report of the trial Court on additional issue No.6A and then to proceed further to decide the appeal filed by the plaintiffs on merits.

Keeping in view the above facts, this appeal is allowed to the extent that the order of the Ist Appellate Court framing additional issue is maintained, however, the same is set aside so far, it relates to setting aside the judgment and decree of the trial Court. The trial Court will proceed further with the matter as per directions of the Ist Appellate Court to record the evidence, if required on issue No.6A and then send the report to the Ist

Appellate Court. As the matter is quite old, the trial Court will complete the entire proceedings within a period of six months on the receipt of copy of this order and send its report to the Ist Appellate Court.

The parties are also directed to appear before the Ist Appellate Court on 15.01.2019, on which date, the Ist Appellate Court will take up the file and fix the next date for disposal of appeal after receiving the report of the trial Court.

December 10, 2018.

Jyoti-II

**(SURINDER GUPTA)
JUDGE**

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No