

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

RSA No.4464 of 2017 (O&M)

Date of Order:27.11.2018

Ramrati

..Appellant

Versus

Sujan Singh

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sanjay Vashisth, Advocate,
for the appellant.

Mr. S.K.Yadav, Advocate,
for the respondent.

ANIL KSHETARPAL, J(Oral)

Defendant-appellant is in the regular second appeal against the judgment passed by the learned first appellate court reversing the judgment of the trial court.

Only skeleton facts are being noticed because this court is of the opinion that the case is required to be remitted to the trial court to frame proper issues and adjudicate upon the same. Nityanand was owner of 2 kanals of land. Defendant claims that through a writing (contract) dated 10.11.1972, 1 kanal of land was sold to Ganeshi, their predecessor-in-interest. Thereafter there is another writing Ex.D2, through which Sujaan Sigh, plaintiff, acknowledges that on receipt of Rs.10,000/- he has transferred 10 marlas of land which was in the possession of the predecessor-in-interest of the defendant. Defendant has also purchased land measuring 1 kanal from Smt. Sashi daughter of Kanwar Singh son of Nityanand through registered sale deed.

Learned first appellate court has held that writing dated

08.08.2001 being unregistered does not result in passing of title in the immovable property. Learned first appellate court is correct to that extent. However, neither the trial court nor the learned first appellate court has considered the fact that if the writing (contract) dated 08.08.2001 is established, than defendant shall be entitled to protect her possession in view of the provisions of Section 53-A of the Transfer of Property Act i.e. possession in part performance.

Hence, this court frames a additional issue, i.e. “Whether defendant has proved execution of document dated 08.08.2001, Ex.D2 and consequently defendant is entitled to protect her possession with respect to 10 marlas land?OPP”

In view thereof, the judgments passed by both the courts below are set aside and the case is remitted back to the learned trial court to grant opportunities to the parties to lead their evidence in support of the additional issue framed and thereafter re-decide the suit as expeditiously as possible.

Parties through their counsels are directed to appear before the learned trial court on 18.12.2018.

C.M.No.11624-C of 2017

Prayer in this application is for condonation of delay of 77 days in re-filing the appeal.

For reasons mentioned in the application, which is supported by an affidavit, the delay of 77 days in re-filing the appeal is condoned.

Application is allowed.

November 27, 2018

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Whether speaking/reasoned

Whether reportable

**(ANIL KSHETARPAL)
JUDGE**

: Yes/No

: Yes/No