

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

RSA No.5080 of 2017 (O&M)

Date of decision: 15.03.2018

Patras

... Appellant

Versus

Renu Sharma and another

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. D.S. Gandhi, Advocate
for the appellant.

Mr. Meenu Salwan, Advocate
for the caveator/respondents.

REKHA MITTAL, J. (Oral)

The present appeal directs challenge against judgments and decrees passed by the Courts whereby suit filed by the plaintiff/appellant for possession by ejectment of defendant Nos.1 and 2 from house bearing No.2575/2 situated at Gali No.2, Karam Pura, Nai Abadi, Amritsar and for payment of mesne profits @ Rs.15,000/- per month from 28.02.2007 to 20.04.2013 has been dismissed by the Civil Judge (Jr. Div.), Amritsar vide judgment and decree dated 22.07.2016 and the appeal preferred by the plaintiff/appellant did not find favour with the Additional District Judge, Amritsar vide judgment and decree dated 29.07.2017.

Counsel for the appellant would urge that as the appellant did

not adduce evidence to prove the sale deeds dated 26.09.2005 and 28.02.2007 vide which he purchased the property in dispute from Smt. Raj Rani, he possibly cannot assail the judgments on merits but his application for additional evidence filed under Order 41 Rule 27 CPC for proving the aforesaid documents, in accordance with law, may be allowed. It is further argued that the appellant availed several opportunities for adducing evidence but only got recorded his examination-in-chief on one of the dates i.e. 10.07.2015 and thereafter he did not cause appearance for his cross-examination and eventually evidence of the appellant was closed by order dated 20.11.2015. It has been argued that a serious prejudice shall be caused to the appellant in recovering possession of the suit house, purchased by him after spending huge amount, in the interest of substantial justice, judgments and decrees passed by the Courts may be set aside and an opportunity may be allowed to the appellant/plaintiff to adduce evidence by way of his cross-examination as well as to prove the sale deed(s) executed in his favour by Smt. Raj Rani.

Counsel representing caveator/respondent No.1 has refuted contention of the appellant by contending that as the appellant did not bother to appear in the witness box for his cross-examination nor adduced any other evidence despite large number of opportunities provided for the purpose, he can neither be heard to say that he should be given an opportunity for completion of his cross-examination nor for adducing other evidence. It is further argued that in the grounds of appeal raised before the

first appellate Court, the appellant did not pray for giving him an opportunity to adduce additional evidence when otherwise no such application for adducing additional evidence was filed by him. Further argued that as the appellant did not challenge order dated 20.11.2015 whereby his evidence was closed, he cannot be allowed to reopen the case as order dated 20.11.2015 has attained finality between the parties.

I have heard counsel for the parties, perused the paper book particularly the judgments passed by the Courts.

Indisputably, the appellant did not adduce any evidence before the trial Court as his statement recorded in examination-in-chief cannot be read into evidence for want of cross-examination. Meaning thereby that there is not even an iota of evidence led by the appellant to discharge onus of issue No.1 with regard to his entitlement to possession by ejectment of the respondent/defendants.

Perusal of the judgment passed by the trial Court particularly para No.1 would reveal that the appellant staked his claim for possession of the suit property on the premise that he has become owner thereof on the basis of purchase from Smt. Raj Rani vide sale deeds dated 26.09.2005 and 28.02.2007. No doubt, the appellant/plaintiff availed number of opportunities for adducing evidence but failed to examine any witness except his statement by way of examination-in-chief. In case, the appellant is not given opportunity to adduce evidence to prove his entitlement to recover possession of the suit house from the respondents, he would be

debarred for all the times to come to seek adjudication of his claim on merits. Rules of procedure are handmaid of administration of justice and required to be applied for enhancing the cause of justice. Court in appeal is competent to examine correctness or otherwise of every order passed by the trial Court. The respondents/defendants can well be compensated with costs for the inconvenience and expenses incurred by them in contesting the civil suit, first appeal as well as the present appeal. As the respondents are in possession of the property, failure of the appellant to adduce evidence at an appropriate stage of the proceedings has rather enured to their benefit that they would be entitled to retain possession of the suit house till the matter is finally decided by the Court. In the given scenario, interest of justice commands that the judgments and decrees passed by the Courts are set aside and the appellant is allowed one effective opportunity to tender himself for cross-examination and adduce other relevant evidence, in accordance with law.

For the foregoing reasons, the appeal is allowed; judgments and decrees passed by the Courts are set aside; suit filed by the appellant is restored on the board of the trial Court. The appellant is allowed one effective opportunity to adduce his entire evidence subject to payment of costs of Rs.1 lakh to be deposited with the trial Court in the names of respondents in equal proportion i.e. Rs.50,000/- each on or before 16.04.2018. In case the appellant fails to deposit the costs with the trial Court within the stipulated period, the appeal shall be deemed to be

dismissed and judgments and decrees passed by the Courts shall stand affirmed.

15.03.2018
ashok

(REKHA MITTAL)
JUDGE

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