

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

**RSA No.1603 of 2005(O&M)
Date of Order: 22.02.2019**

Kundan Lal

..Appellant

Versus

Roshan Lal and others

..Respondents

COCF No.268 of 2019(O&M)

Jagmal Singh and others

...Petitioners

Versus

Jai Bhagwan and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Surya Parkash, Advocate, for the appellant.
Mr. Ashish Gupta, Advocate, for respondent no.1.

ANIL KSHETARPAL, J.

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

This court is not intentionally writing detailed reasons lest it may prejudice any of the party in view of the fact that this case needs to be remitted back to the learned trial court to examine as to whether the plaintiff is entitled to protect his possession in part performance of the contract of sale i.e. a receipt dated 18.07.1978.

Both the courts have erred in refusing to look into the receipt dated 18.07.1978 on the ground that the original receipt has not been

produced.

Learned counsel for the appellant while referring to the statement of PW3-Sewa Ram has submitted that the original receipt was produced which was part of a note book (Bahi) and it was specifically stated by the aforesaid witness that he has seen the original. Hence, he submitted that the courts erred in refusing to consider the receipt in evidence on the ground that only the photocopy has been produced. He has further drawn attention of the court to the note wherein the court recorded while recording the statement in evidence, that the admissibility of the aforesaid document shall be decided at the time of final hearing. This is one aspect of the matter.

Second, the plaintiff claims that he is owner in possession of a piece of land having purchased the same on payment of entire sale consideration vide receipt dated 18.07.1978 and has constructed his house.

Although, before both the courts below, none of the party unfortunately pleaded or even raised argument on the basis of Section 53-A of the Transfer of Property Act, 1882, however, this court being a court expected to do substantive justice between the parties, cannot overlook such aspect. Section 53-A of the Transfer of Property Act, 1882 permits an agreement holder pursuant to contract for sale to protect his possession in part performance thereof. However, this court cannot record a finding unless parties are given opportunity to lead further evidence.

Accordingly, judgments passed by the learned trial court as well as of the first appellate court are set aside. The case is remitted back to the learned trial Court to frame an issue on the applicability of Section 53-A of the Transfer of Property Act, 1882 and thereafter re-decide the matter.

COCP No.268 of 2019

In the contempt petition, violation of interim orders passed by this court is being asserted. Once the case is being remitted back, the aforesaid contempt petition does not require any further order.

Parties through their counsels are directed to appear before the learned trial court on 18.03.2019.

Record of the courts below be returned.

February 22, 2019
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(ANIL KSHETARPAL)
JUDGE

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