

In the High Court of Punjab and Haryana at Chandigarh

**RSA- 3113 of 2014 (O&M)
Date of Decision: 7.11.2019**

Ram Parshad and others

---Appellants

versus

Som Nath and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. R.S.Budhwar, Advocate
for the appellants**

**Mr. S.S.Goripuria, Advocate,
for the respondents**

Rekha Mittal, J.

CM No. 9236-C of 2019

Prayer in this application is for impleading legal representatives of Jeeta @ Ranjit Singh-appellant No. 3 (since deceased).

In view of averments made in the application supported by an affidavit of Rahul son of Jeeta @ Ranjit Singh and arguments advanced by counsel for the applicants, the application is allowed and persons mentioned in para No. 2 of the application are allowed to be brought on record as legal representatives of Jeeta @ Ranjit Singh, appellant No. 3 (since deceased), for the purpose of present lis only, subject to just exceptions.

Disposed of accordingly.

Main case

Challenge in the present appeal has been directed against

concurrent findings recorded by the Courts whereby suit for possession by way of specific performance of agreement to sell dated 12.3.2003 was decreed by the trial court, vide judgment and decree dated 24.7.2010 and appeal preferred by unsuccessful appellants-defendants was dismissed by the Additional District Judge, Kurukshetra, vide judgment and decree dated 30.11.2013.

Counsel for the appellants would argue that findings of the courts both in regard to agreement dated 12.3.2003 as well as readiness and willingness of the respondents-plaintiffs to perform their part of the agreement are grossly faulty and result of misreading of evidence and failure to take into consideration various aspects that have material bearing on readiness and willingness of the respondents-plaintiffs. He would argue that the Appellate Court is the final court to determine factual controversy but para No. 12 of the judgment of Appellate Court on the basis whereof the appeal has been dismissed is just reproduction of paras 11 and 12 of the judgment of trial court, sufficient to show that the Appellate Court has decided the appeal without reading and appreciating the evidence, therefore, failed to discharge its onerous obligation to pass a decree that ought to have been passed by the trial court.

Counsel representing the respondents-plaintiffs, on the contrary, would argue that concurrent findings recorded by the courts do not merit intervention in second appeal, in view of limited scope for interference.

Perusal of para 12 of the judgment of trial court and that of the Appellate Court would reveal that findings of the Appellate court starting from 10th line of the said para is verbatim reproduction of para 12 of the

judgment of trial court. In the first nine lines of that para, there is reference to last seven lines of para 11 of the judgment of trial court.

Reading of para 12, basis for disposal of appeal shows the Appellate Court in poor light as it has shirked from its responsibility to decide the appeal by addressing the material factual and legal questions. As has rightly been argued by counsel for the appellants, the Appellate Court is the final court of fact and is required to examine the case as it has been exercising the jurisdiction of trial court. In this view of the matter, the decree and judgment passed by the Appellate court cannot be allowed to sustain and is accordingly set aside.

In view of what has been discussed hereinbefore, the appeal is allowed. Judgment and decree passed by the Appellate court is set aside. The matter is remitted to the successor court of Sh. M.M.Dhonchak, the then Additional District Judge, Kurukshetra for decision of the appeal afresh, in accordance with law. Parties through their counsel are directed to appear before the Appellate court on 6.12.2019. The Appellate court is directed to decide the appeal within a period of three months of the parties putting in appearance.

(Rekha Mittal)
Judge

7.11.2019

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No