

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

**SAO No. 22 of 2016 (O&M)
Date of Decision: May 22, 2019**

Rajni through LRs

.....APPELLANT

VERSUS

M/s Cee Enn Estates Pvt. Ltd. and others

.....RESPONDENTS

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Suveer Sheokand, Advocate
for the appellants.

Mr. Kanwaljit Singh, Sr. Advocate with
Mr. Anil Bhateja, Advocate
for respondent No. 1.

SURINDER GUPTA, J.(Oral)

Heard.

Plaintiff-Rajni filed suit seeking relief of possession of 1000 Sq. yards of plot out of Khasra No. 93/2, (93 Min), 92, 88/2, 89/2, 91/4, 91/1, 95/1 situated in village Barewal Awana, Tehsil & District Ludhiana on the basis of agreement to sell dated 16.06.1989 executed by Jit Singh (since deceased) now represented by his legal heirs. The suit was decreed and legal heirs of defendant No. 1 were directed to execute and register the sale deed in favour of plaintiff and defendants No. 3 and 4 namely Jagjit Singh and Nirmal Singh were directed to join in the execution of sale deed as per the decree.

M/s Cee Enn Estates Pvt. Ltd., who was not party to the suit

preferred appeal against the judgement and decree dated 01.08.2009 passed by Civil Judge (Jr. Divn.), Ludhiana with the plea that it had purchased land measuring 16 Bighas, out of land comprised in Khewat No. 1310, Khatauni No. 1673-1674-1675, Khasra No. 88/2, 89/2, 91/4, 94/1, 95/1, 93/2 and 92 as per jamabandi for the year 1991-92 from defendants No. 3 and 4 vide sale deed dated 06.11.1997. It was alleged that defendants No. 3 and 4 were bonafide purchasers of the land and have right to sell the same to the appellant.

Learned Ist Appellate Court remanded the case to the trial Court with direction to provide opportunity to the appellant to contest the suit. While passing the order, it was observed by the Ist Appellate Court as follows:

- (i) Although, the plaintiff has duly proved on record the agreement to sell in question, but the learned Lower Court fell in error while holding that the plaintiff is entitled to decree for specific performance with regard to property mentioned in the head note of the plaint.
- (ii) Learned lower Court did not properly appreciate the facts regarding agreement in question dated 16.06.1989, vide which the defendants agreed to sell land out of land comprised in khasra No. 93/2, (93 min), 92, Khata No. 1113/1494, 1495 and 1110/1489/1 as shown in the jamabandi for the year 1986-87.

- (iii) The description of the property qua which the relief was sought has not been duly mentioned in the plaint.
- (iv) The agreement was only qua land of Khasra No. 93/2 (93min), 92 but the decree was allowed for the land of Khasra No. 93/2 (93min), 92, 88/2, 89/2, 91/4, 94/1 and 95/1.
- (v) Vide agreement to sell dated 16.06.1989 Charan Singh had agreed to sell the land measuring 500 sq. yards but the sale deed dated 11.08.1989 was executed for land measuring 1200 sq. yards, which is in complete departure from agreement dated 16.06.1989 and this fact was not considered by trial Court.

It was also observed by the lower Appellate Court that defendants No. 3 and 4 have not disclosed that they had sold the property to appellant, which now has vested interest in the suit property, in view of their claim of bonafide purchaser and has right to contest the suit.

The question which arise for consideration is as to whether the order passed by the Appellate Court falls within the parameters as prescribed under Order 41 Rule 23, 23-A of Code of Civil Procedure (for short CPC).

Order 41 Rule 23, 23-A CPC reads as follows:

23. Remand of case by Appellate Court.- Where the Court from whose decree an appeal is preferred has disposed of the suit upon a preliminary point and the decree is reversed in

appeal, the Appellate Court may, if it thinks fit, by order remand the case, and may further direct what issue or issues shall be tried in the case so remanded, and shall send a copy of its judgement and order to the Court from whose decree the appeal is preferred, with directions to re-admit the suit under its original number in the register of civil suits, and proceed to determine the suit; and the evidence (if any) recorded during the original trial shall, subject to all just exceptions, be evidence during the trial after remand.

23-A Remand in other cases.- *Where the Court from whose decree an appeal is preferred has disposed of the case otherwise than on a preliminary point, and the decree is reversed in appeal and a retrial is considered necessary, the Appellate Court shall have the same powers as it has under Rule 23.*

The suit was not decided on preliminary point, as such, the provisions as contained in Order 41 Rule 23 CPC are not applicable. The Ist Appellate Court has not reversed the decree by recording the judgment on all the issues decided by the trial Court while remanding the case, as such, the order of remand is also bad, as per the provisions of Under Order 41 Rule 23-A CPC.

Learned counsel for respondent No. 1 has argued that the judgment of trial Court is not binding on respondent No. 1 for the reasons that its vendors had purchased the land before filing of the suit by plaintiff. Though sale in favour of respondent No. 1 is dated 06.11.1997 i.e during pendency of suit but the same is not hit by the principle of lis-pendens. After the sale of land of their share neither of the defendants had any interest in the land, as such, they did not contest the case filed by the plaintiff resulting in passing of decree against them which affects the right

of respondent No. 1. The land purchased by respondent No. 1 is also different from the land agreed to be sold to the plaintiff, who had claimed agreement of 500 sq. yard of land but the sale deed of 1200 sq. yard has already been executed in her favour. Her vendors have sold more land than agreed to be sold to her.

The issue raised by learned counsel for respondent No. 1 does not call for any answer in this appeal as the matter in this appeal is confined to the legality of the order passed by the Ist Appellate Court remanding the case.

As already discussed, the remand order is not within the parameters of Order 41 Rule 23, 23-A CPC. Option before the Ist Appellate Court was to see as to whether the appellant- M/s Cee Enn Estates Pvt. Ltd. has any right to file the appeal, if so, to proceed further to decide the appeal on merits in accordance with law. While remanding the case, the Ist Appellate Court has recorded certain findings which will ultimately affect the merits of the case and the trial Court will not be in a position to go out of those findings while appreciating the evidence.

Keeping in view the above facts and circumstances, I find that order dated 24.12.2015 passed by the Additional District Judge, Ludhiana is legally not sustainable and is to be set aside. This appeal has merits and the same is accepted.

However, it is made clear that while disposing of the appeal, if any application is moved by either of the party, the same will be decided by the Ist Appellate Court without being influenced by the observations in this order.

Parties are directed to appear before the Ist Appellate Court / Successor Court on 05.07.2019 on which date the file of appeal will be taken on Board and proceeded further to decide the appeal, filed by respondent No. 1, in accordance with law.

May 22, 2019
Jyoti-II

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:
Whether Reportable:

Yes/No
Yes/No