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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-2246-2022 (O&M)
Date of Decision: 28.10.2022

KASHMIR SINGH

.. Appellant

Vs.

JASWANT KAUR AND ANOTHER

..Respondents

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Ms. Kanwar S. Walia, Advocate for the appellant.

...

Manoj Bajaj, J. (Oral)

Appellant (plaintiff) has filed this regular second appeal against the judgment and decree dated 24.08.2022 passed in CA-314-2019 by Addl. District Judge, Kapurthala, whereby the judgment and decree passed in CS-784-2016 by the Addl. Civil Judge (Sr. Dinv.), Kapurthala was set aside and the case was remanded back for deciding afresh.

Learned counsel contends that the appellant (plaintiff) brought a suit seeking specific performance of agreement to sell dated 10.07.2015 (Ex-P2) against the vendor-Amrik Singh (defendant No.1) and the same was decreed partly by ordering execution of sale deed in respect of land measuring 1K-6M in favour of the plaintiff, as the remaining land contained in the agreement to sell stood sold to Jaswant Kaur (defendant No.2) pursuant to the decree dated 24.11.2015 arising from another agreement executed by vendor with her on 10.02.2014. Learned counsel submits that though the previous purchaser Jaswant Kaur was impleaded as a party in the suit, who had set up a plea of exchange of land with the plaintiff, but her claim was rejected by the trial Court and aggrieved against that, she

preferred the appeal before the Addl. District Judge, Kapurthala, wherein the appellate Court observed that the defendant No.1 has suffered prejudice, who was not given effective opportunity to contest the suit. Learned counsel submits that once the defendant No.1 was impleaded, who was throughout represented by a counsel, the Appellate Court could not have entertained this argument, particularly when the vendor had never preferred any appeal against the said decree.

Heard.

Considering the nature of prayer made by the appellant, this Court is not inclined to issue notice to the respondents, as it may cause unnecessary burden upon them and the nature of order would not cause any prejudice to them. However, it is made clear that in case the respondents feel that the appellant has not approached this Court with clean hands, it shall be open for them to seek recalling of this order.

A perusal of the judgment and decree passed by the Addl. District Judge shows that the appellate Court has examined the solitary issue relating to the rights of defendant No.1, who in fact never raised any defence, much less by leading any evidence to the claim raised by the plaintiff (appellant). The appellate Court on one hand has set aside the judgment and decree passed by the trial Court and remanded the case back for fresh consideration, and on the other hand has drawn the decree based upon the remand order. Most importantly, the defendant No.1 (vendor), though appeared in the appeal, but there is no observation in the impugned judgment that he ever expressed that any prejudice was suffered by him before the trial Court. Even no argument in this regard was raised by him before the appellate Court, therefore, this ground raised by Jaswant Kaur

could not have been accepted. Thus, the appellate Court committed serious error of law and failed to deal with the appeal on merits, much less by examining the correctness of findings returned by the trial Court on material issues.

Resultantly, the impugned judgment and decree passed by the first appellate Court is set aside and it is directed that the appeal filed by Jaswant Kaur be decided afresh after hearing the parties. Parties are directed to appear before the appellate Court on 01.12.2022.

28.10.2022
Jasmine Kaur

(MANOJ BAJAJ)
JUDGE

Whether speaking/reasoned	Yes	No
Whether reportable	Yes	No