

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

RSA No.459 of 2015(O&M)

Date of Order: 17.05.2022

Swaran Singh and others

..Appellants

Versus

Diwan Singh

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. S.S.Rangi, Advocate, for the appellants.  
Mr. P.S.Bhangu, Advocate, for the respondent.

**ANIL KSHETARPAL, J(Oral)**

While assailing the concurrent findings of fact arrived at by the Courts below, the defendants have filed this appeal. It has been noticed that a suit for specific performance of the agreement to sell was filed on 10.12.2009, claiming that the defendant agreed to sell the land measuring 2 bighas and 2 biswas on 10.06.2003 on receipt of Rs.45,000/- as earnest money out of sale consideration of Rs.1,12,700/-. The sale deed was to be executed on or before 25.05.2004, date of which was repeatedly extended by various writing from 25.05.2004 to till 15.10.2009. It is the case of the defendants-appellants that their predecessor-in-interest borrowed a sum of Rs.1,00,000/- and in order to secure the loan, the agreement to sell was got executed. Even after the death of Sh. Bachan Singh, his heirs were made to thumb mark the various documents in order to extend the date of execution of the agreement to sell. The last extension is stated to have been signed upto 15.10.2009.

This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book.

Both the Courts have decreed the suit after finding that the plaintiff successfully proved his case. It is important to note that the counsel representing the defendants neither cross-examined the witnesses produced by the plaintiff nor advised them to appear in evidence.

Before the First Appellate Court, an application for leading the additional evidence was filed which was also dismissed by the First Appellate Court in a casual manner. At least, the First Appellate Court should have been sensitive towards the rights of the poor litigant. It was specifically asserted by the defendants that their counsel deliberately did not cross-examine the witnesses produced by the plaintiff nor advised them to appear in evidence. In such circumstances, the First Appellate Court should have exercised its powers under last clause of Order 41 Rule 27 CPC which enables the Court to permit production of any document or any witness, to enable it to pronounce a judgment in an unbiased and fair manner or allow evidence for any other substantial clause. Here is a case where the defendants have specifically pleaded that the agreement to sell is only to secure the repayment of the loan which was borrowed in June, 2003.

The learned counsel representing the plaintiff has submitted that in the execution of the decree, not only the sale deed has been registered but the possession also has been delivered.

Be that as it may. In the considered view of the court, the First Appellate Court has erred in dismissing the application for permission to lead the evidence. In the facts and circumstances of the present case, the judgment passed by the First Appellate Court is set aside. The defendants (appellants herein) are permitted to lead evidence which will include cross-examination of the witnesses examined by the plaintiff.

The First Appellate Court will re-decide the appeal on reappreciation of the evidence including the additional, if any, produced by the parties.

The parties through their counsels are directed to appear before the First Appellate Court, on 31.05.2022.

All the pending miscellaneous applications, if any, are also disposed of.

May 17, 2022  
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(ANIL KSHETARPAL)  
JUDGE

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