

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

237

RSA-757-2014 (O&M)
Date of decision: 15.03.2022

Pillu Singh

.....Appellant

Versus

Ram Chander and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Vikas Singh, Advocate
for the appellant.

Mr. Sherry K. Singla, Advocate
for respondent No.1.

None for respondents No.2 to 5.

MANJARI NEHRU KAUL, J. (ORAL)

The appellant is defendant No.1 in a suit for specific performance of agreement to sell dated 09.06.2007 with regard to 8 kanals 0 marla comprising in khewat No.38 khatauni No.76 and bearing khasra No.68//11 (8-0) situated within the revenue estate of village Tarkhanwala, Tehsil Talwandi Sabo, District Bathinda as per jamabandi for the year 2004-05 (4th share belonging to appellant-defendant No.1 and 1/4th belonging to defendant No.2). Both the Courts below have concurrently recorded findings of fact that respondent No.1-plaintiff had successfully proved the execution of agreement to sell.

Learned counsel for the appellant submits that the lower appellate Court affirmed the judgment and decree passed by the Court below even though an application under Order 41 Rule 27, moved by the appellant for leading additional evidence had not been decided and was still pending. Learned counsel submits that the said application had

been moved for leading additional evidence as it was essential for the just adjudication of the civil dispute between the parties. He further submits that in the circumstances, the case shall have to be remanded back to the lower appellate Court for first deciding the application under Order 41 Rule 27 which was pending consideration of the Court below when the appeal was decided.

Learned counsel appearing for respondent No.1 does not oppose the prayer made by learned counsel for the appellant for remanding the case back to the lower appellate Court in view of the application under Order 41 Rule 27 not having been decided by the lower appellate Court.

I have heard learned counsel for the parties and perused the relevant material placed on record.

This Court concurs with the learned counsel for the appellant that a patent illegality has indeed been committed by the lower appellate Court in not deciding the application under Order 41 Rule 27 for additional evidence while deciding the appeal as per the law laid down by the Hon'ble Supreme Court in ***Premier Automobiles Ltd., Bombay Vs. Kabirunissa : 1991 AIR (SC) 91*** and ***Ashok Kumar Vs. Surinder Kumar (PHHC) : 2005(2) RCR (Civil) 557***. In the aforementioned circumstances, a case of this nature requires to be remanded back to the lower appellate Court lest any prejudice is caused or interest of any of the parties suffers.

It is, therefore, deemed appropriate that the lower appellate Court decides the application under Order 41 Rule 27 expeditiously in accordance with law and thereafter proceed to decide the appeal afresh

on merits. It would be expected from the lower appellate court that owing to the long pendency of the case, it shall make every endeavour to decide the same expeditiously preferably within a period of six months from today.

The parties through their counsel are directed to appear before the lower appellate Court on 05.04.2022.

The Registry is directed to return the LCR to the lower appellate Court forthwith.

Disposed of accordingly.

15.03.2022

Vinay

(MANJARI NEHRU KAUL)
JUDGE

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