

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

RSA No.3104 of 2018 (O&M)

Date of Decision: 21.11.2023

Lorik Das

...Appellant

Versus

Jaswinder Singh

...Respondent

CORAM: *HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA*

Present:- Mr. Vishal Munjal, Advocate
 for the appellant.

None for the respondent.

MEENAKSHI I. MEHTA, J.(Oral)

Feeling aggrieved by the judgment and decree as passed by learned Civil Judge (Junior Division), Dera Bassi (for short 'the trial Court') on 05.01.2015, whereby the Civil Suit instituted by the respondent-plaintiff (here-in-after to be referred as 'the plaintiff') against the appellant-defendant (here-in-after to be referred as 'the defendant') for seeking a decree for possession of the suit property by way of specific performance of the agreement to sell dated 15.11.2006, had been decreed with cost and also by the judgment and decree as handed down by learned Additional District Judge, SAS Nagar, (Mohali) {for short 'the Lower Appellate Court'} on 21.12.2017, dismissing the appeal filed by the defendant against the afore-mentioned judgment and decree dated 05.01.2015, he (defendant) has chosen to prefer the instant Regular Second Appeal to lay challenge to the same.

2. It is worth-while to mention here that in the order passed by the Co-ordinate Bench on 08.12.2022 in this appeal, it has been mentioned that as per the report of the Registry, the respondent (plaintiff) had been duly served but there was no representation on his behalf.

3. I have heard learned counsel for the appellant-defendant in the present appeal and have also perused the file carefully.

4. Learned counsel for the defendant contends that along-with the first appeal moved before the Lower Appellate Court, the defendant had filed an application under Order 41 Rule 27 CPC for seeking permission to lead the additional evidence but the Lower Appellate Court has decided the above-referred appeal without adjudicating the said application and in these circumstances, the impugned judgment and decree passed by the afore-said Court on 21.12.2017, deserve to be set-aside.

5. A perusal of the order as passed by the Lower Appellate Court on 07.02.2015 (annexed at page No.82 in the paper-book), reveals that it has categorically been mentioned therein that while presenting the appeal, the defendant had also moved the above-said application with the prayer to allow him to lead additional evidence. However, it is pertinent to point it out here that throughout in the judgment rendered by the Lower Appellate Court, there is not even a whisper about the afore-mentioned application. It being so, it is explicit that the impugned judgment and decree as passed on 21.12.2017, are not legally sustainable and resultantly, the same are hereby set-aside and the matter is remanded to the concerned Lower Appellate Court, with the direction to decide the above-referred application moved by

the appellant-defendant and also to adjudicate the afore-said first appeal afresh, in accordance with law, after hearing learned counsel for both the parties, within a period of four months from the date of receipt of the certified copy of this order.

6. The Regular Second appeal in hand stands disposed of accordingly.

November 21, 2023
pooja

(MEENAKSHI I. MEHTA)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>