



SAO-18-2024(O&M)
Date of decision : 08.05.2024

Lajja Ram and others **...Appellants**

Vs.

Chaman Lal and others **...Respondents**

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Y.P. Singla, Advocate
for the appellants.

Mr. Abhay Chauhan, Advocate and
Mr. Dewak Grover, Advocate
for the respondents.

ANIL KSHETARPAL, J. (Oral)

1. This second appeal against order has been filed by the defendants to challenge the correctness of the First Appellate Court's order remitting the matter back to the trial Court after allowing the plaintiffs to amend the plaint.

2. In order to comprehend the issues involved in the present case, some relevant facts, in brief, are required to be noticed.

3. The respondents (plaintiffs before the trial Court) filed a suit for possession by way of specific performance of the agreement to sell. The defendants contested the suit on various other grounds including the ground that the plaintiffs have not sought declaration with regard to unilateral communication dated 31.05.2010 by the defendants for cancelling the agreement. The trial Court dismissed the plaintiffs' suit only on the ground that



the plaintiffs have failed to seek relief of declaration with regard to notice dated 31.05.2010. The plaintiffs filed the first appeal and also filed an application under Order VI Rule 17 of the Code of Civil Procedure, 1908 for permission to amend the plaint to formally seek declaration with respect to notice dated 31.05.2010. The First Appellate Court has allowed the application and remitted the matter back to the trial Court for fresh decision.

4. Learned counsel representing the appellants contends that the First Appellate Court erred in remanding the case back to the trial Court only after allowing the amendment. He further submits that the plaintiffs have been permitted to challenge the correctness of cancellation notice dated 31.05.2010, after the prescribed period for limitation has elapsed. He relied upon the judgment passed in '***I.S. Sikander (D) by Lrs v. K. Subramani (SC)***', 2014(1) **R.C.R. (Civil) 236.**

5. This Court has considered the submissions made by the learned counsel for the parties.

6. In fact, the judgment passed by the Hon'ble Supreme Court in ***I.S. Sikander's*** case (supra) has already been explained in a subsequent judgment in '***Manickam @ Thandapani and another vs. Vasantha***', 2022 (2) RCR (C) 862. and '***Mrs. A. Kanthamani vs. Mrs. Nasreen Ahmed***', 2017(4) SCC 654.

7. This Court in '***Surinder Mohan Batra and others vs. Gurbinder Pal Singh Tiwana and another***', RSA No.1770 of 2014 decided on 03.08.2023, has also held that the judgment passed in ***I.S. Sikander's*** case (supra) is in the peculiar facts of the aforesaid case.

8. Moreover, the communication dated 31.05.2010, is an unilateral



communication by the defendants to the plaintiffs. It is not a contract which is required to be avoided by filing the suit for declaration. In any case, the amendment allowed by the First Appellate Court is only formal in nature because of a technical objection taken by the defendants. Hence, the question of limitation would not arise in the present case.

9. Learned counsel representing the appellants does not dispute that the trial Court dismissed the plaintiffs’ suit only on the objection of the defendants with regard to failure to challenge the cancellation of agreement to sell vide notice dated 31.05.2010. Once, the formal defect in the suit stood cured the objection of the defendants pales into insignificance. The trial Court has not discussed the case on merits. Hence, the First Appellate Court was justified in remitting the matter back to the trial Court.

10. Consequently, finding no merit, the appeal is dismissed.

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

08.05.2024	(ANIL KSHETARPAL)		
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Whether speaking/reasoned :	Yes	No	
Whether Reportable :	Yes	No	