

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

**RSA No.3831 of 1998 (O&M)
Date of Decision: July 11, 2018**

V.K. Sharma

...Appellant

Versus

Poonam Sardana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Arun Jain, Senior Advocate
with Mr. Ashok Jindal, Advocate
for the appellant.

Mr. N.S.Boparai, Advocate for respondent No.1.

Mr. Anand Chibbar, Senior Advocate with
Mr. Vaibhav Sahni, Advocate for respondent No.2.

FATEH DEEP SINGH, J.

A civil suit by plaintiff-V.K. Sharma was filed against the defendants/respondents Poonam Sardana, Shelly Sardana (now deceased) being represented by her mother Vimla Sardana, V.P. Sardana and M/s Manohar Singh and Company for possession by way of specific performance of agreement to sell dated 20.06.1984 for sale of residential plot No.631-P, Sector 4, Panchkula.

The brief claim of the plaintiff is that; he entered into an agreement to sell in respect of the said property on 20.06.1984, wherein, all the terms and conditions were incorporated. It is alleged that the said sale was struck through defendant No.3-M/s Manohar Singh and Company, whereby, the total sale consideration was Rs.81,000/- out of which, Rs.8100/- was received by the seller as earnest money and remaining

amount of Rs.72,900/- was to be paid at the time of execution of the sale deed and the last date for transfer was fixed on or before 20.07.1984. It is claimed by the plaintiff that subsequently defendants failed to perform their part of obligation, whereas, plaintiff was always ready to perform his part of the contract and, hence, filed the suit on 28.9.1984 claiming Rs.4,000/- as damages as well.

The defendants No.1 to 3 in their amended written statement took the preliminary objections of maintainability of suit, lack of locus sandi of the plaintiff and suit being barred by estoppel as well as lack of jurisdiction. On merits claimed that it was the plaintiff who has breached the terms of the agreement and, therefore, the present suit was an outcome of malafide intention as the plaintiff did not have the money to pay the seller to enable him to execute the sale deed. Replication was filed. From the pleadings of the parties the trial Court framed the following issues and vide orders dated 17.11.1995 an additional issue has also been framed:-

1. Whether the plaintiff and the defendants had performed their part of the contract and had been ready and willing to perform their part of the agreement? OPP
 2. Whether the plot measures 221.10 sq. Mtrs. and not 10 marlas is equal to 209 Sq. Mtrs. If so, to what effect on the inter-se rights of the parties? OPD
 3. Whether the suit is not maintainable as alleged? OPD
- Additional issue:-
- 3-A Whether the plaintiff is entitled to be compensated by the defendants by paying damages to the tune of Rs.4000/- as alleged? OPP
 4. Relief.

Learned Civil Judge, (Junior Division), Panchkula vide judgment dated 05.06.1997 dismissed the suit of the plaintiff and directed the defendants No.1 to 3 to refund the earnest money along with 12% interest per annum. The unsuccessful plaintiff filed an appeal against these findings and the Court of learned Additional District Judge, Ambala through impugned judgment dated 14.9.1998 upheld the findings of the trial Court and since the cross-objections of the respondents were not addressed dismissed the same as well. It is these findings which are subject matter of challenge before this Court.

Heard learned counsel for the parties and perused the records of the case. During the course of arguments, this Court has come across a serious lapse that is highlighted from the records of the learned first Appellate Court as is there an application under Order 41 Rule 27 CPC was moved by the appellant through his counsel on 22.11.1997 and was filed in the Court on the same very date. Notice of the this application was given by the learned first Appellate Court to the opposite side. Reply was filed by the respondents side on 3.1.1998. As per the order of the learned first Appellate Court dated 7.2.1998 this application for additional evidence was ordered to be heard at the time of final disposal of the appeal.

A perusal of the impugned judgment nowhere reflects that this application for additional evidence was ever considered at the time of final disposal of the appeal. In the said application prayer has been made by the appellant that he be allowed to summon official of Haryana Urban Development Authority, Panchkula along with relevant file and to prove the factum of submission/non-submission, whether HUDA office was moved

for seeking permission or not and substantial documents Ex.D1 and Ex.D2 were ever submitted before the HUDA or not. As has sought to be argued by the two sides, the terms of the agreement were reduced in writing, wherein one of the stipulation laid down was permission to transfer from the appropriate authority i.e. Estate Office/HUDA, Panchkula and, therefore, a material question affecting issue No.1 and reframed issue No.3(A) as per the impugned judgment. Learned counsel for respondent No.2 has sought to place reliance on *Lisamma Antony vs. Karthiyayani (SC) 2015(2) RCR (Civil) 575*; *P. Purushottam Reddy vs. M/s Pratap Steels Ltd, 2002(2) RCR (Civil) 70*; *Ashwinkumar K. Patel vs. Upendra J. Patel 1999(2) RCR (Civil) 256* and *Parvati Bai vs. Heeralal (Chattisgarh) 2017(1) Civil 813* to hammer home the point that ordinarily Court should not remand a case, if it comes to the conclusion that reasoning of the Court below was wrong in some aspect. However, as has been argued by the appellant side, the cited ratios are certainly factually not applicable to the case in any manner. Since one of the most material aspect for determining respective rights of the parties in the suit was involved and for which additional evidence so sought to be adduced as well as additional issue so framed by the appellant and, therefore, same needs to be adjudicated along with the appeal as per the own orders of the learned Court below dated 07.02.1998 which it has failed to do so and, therefore, to the mind of this Court has resulted in miscarriage of justice. Further more, in the impugned judgment of the learned 1st Appellate Court, no findings have been drawn or discussed pertaining to reframed issue No.3-A which pertains to entitlement of the plaintiff to be compensated by the defendants by paying damages to the tune of Rs.4000/-.

To the specific query of this Court, neither learned counsel for the appellant nor learned counsel for respondents could go through the impugned findings to hold out that this issue has been adjudicated in the impugned findings. By not adjudicating this issue, the Court has certainly run into an error causing immense prejudice to the case of both the sides and, therefore, necessitates that the same be decided to meet the ends of justice.

Since the valuable rights of the parties are involved and, therefore, it is desirable that there should be comprehensive adjudication of the dispute to rule out denial of legitimate and legal rights of the parties. Thus, the Court below on account of inadvertent error has failed to take note of this fact that it was also supposed to decide the application for additional evidence as well as additional issue No.3-A which it did not and, therefore, resulted in miscarriage of justice necessitating intervention by this Court, whereby, the present matter is remanded back to the learned first Appellate Court to re-register the appeal and after notices to both the sides and upon hearing them on application under Order 42 Rule 27 CPC as well as on additional issue No.3-A and to give its findings thereon and to submit its report before this Court within three months from the date of receipt of copy of this Order. The appeal stands disposed off in those terms

(FATEH DEEP SINGH)
JUDGE

July 11, 2018
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No