



In the High Court of Punjab and Haryana, at Chandigarh

Second Appeal Order No. 70 of 2017 (O&M)

Date of Decision: 29.04.2025

Gurdev Singh and Another

... Appellant(s)

Versus

Amrik Kaur and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Gagandeep Singh Sirphikhi, Advocate
for the appellant(s).

Mr. Harminder Singh, Advocate
for respondents No.5 and 6.

Anil Kshetarpal, J.

1. The plaintiffs assail the correctness of the First Appellate Court's order remitting the matter back to the Trial Court for fresh decision.
2. The plaintiffs filed a suit for specific performance of oral agreement to sell allegedly executed by Amrik Kaur, defendant No.1. She denied the execution of the aforesaid oral agreement. Subsequently, she sold the property in favour of defendants No.3 and 4. They filed a detailed written statement. They further transferred the property in favour of defendants No.5 and 6, who were also impleaded as party and they also contested the case. On 12.01.2015, the defendants were not represented and hence, they were proceeded against *ex parte*. On the next day i.e. 13.01.2015, defendants No.3 and 4 filed an application for setting aside the *ex parte* proceedings, however, the Trial Court dismissed the same on the

ground that the final judgment has already been pronounced in the case. An appeal was filed by defendants No.3 and 4 in the First Appellate Court which was allowed and the Trial Court was directed to decide the case after granting an opportunity of hearing to defendants No.3 and 4.

3. The learned counsel representing the appellants submits that once the judgment was pronounced, an application for setting aside the *ex parte* proceedings was not maintainable and only an application under Order IX Rule 13 of the Code of Civil Procedure, 1908 (hereinafter referred to as “CPC”) to set aside the *ex parte* decree was maintainable. He further submits that the First Appellate Court should not have remanded the matter back to the Trial Court without making compliance of Order XLI Rule 23A CPC as neither the findings of the Trial Court, on merits, have been set aside nor the First Appellate Court has found that retrial of the case is necessary. He further submits that defendants No.3 and 4 have already sold the property to defendants No.5 and 6.

4. Per contra, the learned counsel representing the respondents No.5 and 6 submits that an application to set aside the *ex parte* proceedings was filed on the next day i.e. 13.01.2015 at 11.10 A.M. and thereafter, the arguments were heard and the case was decided.

5. From the facts noted above, it is evident that the conclusion drawn by the First Appellate Court is not incorrect. The Trial Court appears to have acted hastily. Once, on the next day i.e. 13.01.2015, an application to set aside the *ex parte* proceedings has been filed, the Trial Court should have heard the parties before proceeding to decide the matter.

6. Keeping in view the aforesaid facts, no ground is made out to

interfere with the impugned judgment passed by the First Appellate Court.

Hence, the present appeal is dismissed.

7. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

April 29, 2025
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No