

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

**Regular Second Appeal No. 843 of 2009**

**Date of decision : November 30, 2010**

Mohinder Singh

....Appellant

versus

Dharam Singh

....Respondent

**Coram: Hon'ble Mr. Justice L.N. Mittal**

Present : Mr. NL Sammi, Advocate, for the appellant

Ms. Sonia G. Singh, Advocate, for the respondent

**L.N. Mittal, J. (Oral)**

Mohinder Singh legal representative of original defendant Jagir Kaur since deceased has filed the instant second appeal having remained unsuccessful in both the courts below.

Respondent-plaintiff Dharam Singh filed suit against Jagir Kaur defendant alleging that plaintiff is owner in possession of the suit property having purchased it from the defendant for ₹ 20,000/- vide agreement to sell dated 5.5.1997. The plaintiff sought permanent injunction restraining defendant from interfering in possession of the plaintiff over the suit property and from dispossessing him therefrom illegally and forcibly.

The defendant alleged that after the plaintiff purchased suit

property from her, the plaintiff again sold the same to the defendant vide agreement dated 26.2.2003 after receiving total sale consideration of Rs 1,35,000/- and since then the defendant is in possession of the suit property. Various other pleas were also raised.

Learned Civil Judge (Senior Division), Patiala vide judgment and decree dated 12.3.2008 decreed the plaintiff's suit. First appeal preferred by defendant has been dismissed by learned Additional District Judge, Patiala vide judgment and decree dated 29.11.2008. Feeling aggrieved, the defendant has preferred the instant second appeal.

I have heard learned counsel for the parties and perused the case file.

Learned counsel for the appellant contended that evidence of the appellant was closed by the trial court by court order and therefore, the suit of the plaintiff has been decreed because there was no evidence on behalf of the defendant. Learned counsel for the appellant prayed that another opportunity be granted to the appellant for leading evidence at own responsibility on payment of costs.

Learned counsel for the respondent has vehemently opposed the aforesaid prayer. It was contended that the defendant-appellant was granted sufficient number of opportunities for his evidence. It was pointed out that original defendant was granted four opportunities for her evidence and after the appellant was impleaded as legal representative of the defendant, he was also granted three more opportunities for his evidence and thus, in all seven opportunities were granted to the appellant for his evidence and therefore, no more opportunity is required to be granted.

I have considered the rival contentions. Perusal of the

judgment of the lower appellate court reveals that only four clear opportunities were granted to the defendant for her evidence. It would not mean that those four opportunities were granted to Jagir Kaur defendant and another three opportunities were thereafter granted to the appellant after he was impleaded as legal representative of the original defendant. On the contrary, the aforesaid observation of the lower appellate court would mean that in all four opportunities were granted to the defendant for her evidence including the opportunities granted to defendant's legal representative i.e. the appellant herein. In view thereof, I am of the considered opinion that ends of justice would be met if another opportunity is granted to the appellant for his evidence at own responsibility on payment of heavy costs.

For the reasons aforesaid, the instant second appeal is allowed. Judgments and decrees of the courts below are set aside and suit is remanded to trial court for fresh decision in accordance with law. Only one more opportunity shall be granted to the appellant for his evidence at own responsibility subject to payment of ₹ 7500/- as costs precedent. The appellant may take assistance of the court to summon evidence but not more than one opportunity shall be granted to the appellant even on the ground of non service of any witness or non appearance of any witness inspite of service or on any other ground whatsoever. Needless to say that plaintiff-respondent shall be entitled to lead evidence in rebuttal in accordance with law.

Parties are directed to appear in the trial court on 12.1.2011.

**November 30, 2010**

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**( L.N. Mittal )  
Judge**