



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

236

RSA-1124-2022 (O&M)

Date of Decision: 07.07.2025

Sanjay Gera

.... Appellant

Versus

Rahul Kakkar

.... Respondent

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: - Mr. Atul Goyal, Advocate for the appellant.

Mr. Shiv Kumar, Advocate for the respondent.

NIDHI GUPTA, J. (ORAL)

1. The appellant-defendant is in second appeal against the concurrent judgments and decrees rendered by both the Courts below whereby the suit for possession by way of specific performance of Agreement to Sell dated 27.02.2009 filed by the respondent-plaintiff, was decreed.

2. At very outset, learned counsel for the appellant-defendant submits that vide impugned judgment and decree dated 23.09.2021, the learned 1st Appellate Court had dismissed the appeal, despite the fact that an application under Order XLI Rule 27 read with Section 151 CPC, filed by the defendant was pending before it. It is contended that the appeal could not have been disposed of by the learned First Appellate Court without first adjudicating upon the said application. To do so, is in conflict with the judgment of this Court in *Sham Lal vs. Raja Ram [RSA-4492-2013]*, decided on 14.03.2022, Law finder doc id # 1975506.



3. Learned counsel for the plaintiff-respondent is unable to dispute the aforesaid legal position. However, learned counsel submits that in pursuance of the judgments and decrees of both the Courts below, the sale deed has been executed in favour of the respondent-plaintiff on 01.03.2023 and only possession of the suit property remains to be delivered to the respondent-plaintiff.

4. Heard.

5. In the present case, the application under Order 41, Rule 27 CPC remains undecided. As per the judgment of this Court in *Sham Lal* (supra) and plethora of other judgments of this Court and of the Hon'ble Supreme Court in *Jatinder Singh and Anr. v. Mehar Singh and Ors., (SC) : Law Finder Doc Id # 172446*; *Amit Manocha v. J.K. Nanda and anr., (Punjab And Haryana) : Law Finder Doc Id # 2638733*; and *Ashwani Kumar v. Naurang Lal, (Punjab And Haryana) : Law Finder Doc Id # 2309354* it is incumbent upon the lower Appellate Court to decide the said application under Order 41 Rule 27 CPC along with the main appeal.

6. As such, keeping in view the undisputed legal position as noted above, I deem it appropriate to remand the case back to the Id. 1st Appellate for deciding the appeal afresh along with the application under Order 41 Rule 27 CPC. As the Civil Suit is of the year 2011, and the Appeal is of the year 2017, the learned Ist Appellate Court is requested to dispose of the matter expeditiously in a time bound manner, preferably within a period of six months from the date of first appearance of the parties before the learned Ist Appellate Court.



7. Both the parties/their counsel are directed to appear before the learned Ist Appellate Court on 8.8.2025.

8. **Disposed of**, accordingly.

9. Pending application(s), if any, shall also stand disposed of.

07.07.2025
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(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No