



133 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

SAO-20-2025 (O&M)

Date of decision : 08.07.2025

Baljit Singh

...Appellant

Vs.

Sitara Singh and another

...Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. A.P.S. Sandhu, Advocate
Mr. Ashish Kaushik, Advocate
for the appellant.

Mr. Prateek Sodhi, Advocate
for the respondents.

ANIL KSHETARPAL, J. (Oral)

1. Through this second appeal against the order, the appellant assails the correctness of the First Appellate Court's order remitting the matter back to the trial Court after allowing the application for permission to lead additional evidence.
2. Originally, the plaintiff (appellant herein) filed a suit for possession by way of specific performance of the agreement to sell dated 08.12.2009, allegedly executed by the defendants in his favour, which was decreed. The defendants filed first appeal, in which, an application seeking permission to lead additional evidence was filed in order to produce a registered deed of mortgage to prove that in fact, it was a loan transaction. The application has been allowed by the First Appellate Court and the case has been remitted back.



3. Learned counsel representing the appellant submits that the First Appellate Court has erred in remitting the matter back to the trial Court in violation of Order XLI Rule 23-A of the Code of Civil Procedure, 1908. He submits that the Court has also erred in allowing application for permission to lead additional evidence as the foundation of the additional evidence sought to be brought on record was not laid in the written statement.

4. *Per contra*, learned counsel representing the respondents submits that he has no objection, if the First Appellate Court is permitted to record additional evidence. However, he submits that the registered deed of mortgage is in consonance with his defence in the written statement.

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

6. On the first aspect, learned counsel representing the respondents has no objection. Hence, the order of the First Appellate Court remitting the matter back to the trial Court is set aside while directing the First Appellate Court to record evidence. However, with regard to second aspect, it would be noticed that the plaintiff filed a suit for possession by way of specific performance on the basis of alleged agreement to sell dated 08.12.2009. The defendant while filing the written statement denied execution of the agreement to sell and averred that in fact, there was a loan transaction. It was also pleaded that there was an agreement of mortgage executed on 08.12.2009. It is evident that the defendant had already laid the foundation of a registered document, which is sought to be produced in an additional evidence. The First Appellate Court has exercised its discretion, which is not proved to have been exercised



arbitrarily.

7. Hence, the present appeal is allowed in part to the effect that the order passed by the First Appellate Court remitting the matter back to the trial Court is set aside; however, the order allowing the application filed by the defendants for permission to lead additional evidence is sustained.

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

08.07.2025

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**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned :

Yes

No

Whether Reportable :

Yes

No