

(2009) 03 SC CK 0034

In the Supreme Court Of India

Case No : Civil Appeal No. 1356 of 2009 (Arising out of S.L.P. (C) No. 22290 of 2007)

Hazura Singh (Dead) thr. L.R.

APPELLANT

Vs

Gurdial Singh and Others

RESPONDENT

Date of Decision : 02-03-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (2009) 03 SC CK 0034

Hon'ble Judges : G. S. Singhvi, J;B. N. Agrawal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Leave granted.

2. The suit for specific performance of an agreement to sell land measuring 12 bighas 4 biswas situated in Village - Hasan, Tehsil - Sarhand, District - Patiala filed by the plaintiffs (respondents herein) was decreed by Sub Judge, Bassi against the defendants (appellants herein) with a direction to them to execute the sale deed on payment of the balance price. The appeal preferred by the appellants was dismissed by Additional District Judge, Patiala. However, the second appeal filed by the appellants was allowed by the High Court and the judgments and decrees of the Courts below were modified by directing that the respondents shall be entitled to interest on the balance amount deposited by him in the trial Court.

3. We have heard learned Counsel for the parties.

4. A perusal of the impugned order shows that the High Court disposed of the second appeal without framing any substantial question of law. It is settled law that in terms of Section 100 of the Code of Civil Procedure, the High Court is required to frame substantial question of law and then only second appeal can be allowed. Since, the High Court has failed to frame substantial question of law, the

order under challenge is liable to be set aside.

5. Accordingly, the appeal is allowed, impugned order rendered by the High Court is set aside and the matter is remanded to the High Court. Now, the High Court shall consider whether any substantial question of law arises in the second appeal or not and if it comes to the conclusion that any such question of law arises, the same shall be framed and, thereafter, the appeal shall be decided in accordance with law after giving opportunity of hearing to the parties.