

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 2690 of 2013 (O&M)
Date of decision : December 10, 2015

Sunita Rani and another

..... Appellants

Versus

Padmawati Bhatiyani and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Lokesh Sinhal, Advocate
for the appellants.

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

Amit Rawal, J (oral).
CM No.7127-C of 2013

This is an application under Section 151 CPC seeking condonation of delay in refiling the appeal.

For the reasons stated in the application, which is duly supported by an affidavit, delay of 76 days in refiling the appeal is condoned.

The application stands disposed of.

RSA No. 2690 of 2013 (O&M)

The appellants-plaintiffs are in Regular Second Appeal against concurrent finding of fact whereby instead of granting

discretionary relief under Section 20 of the Specific Relief Act, 1963 plaintiffs have been held entitled to receive double the amount of earnest money. Though, the trial court ordered refund of earnest money along with interest @ 6% per annum.

Learned counsel for the appellants-plaintiffs contends that the agreement to sell was entered into by defendant No.2 the attorney of defendant No.1. The readiness and willingness on the part of the plaintiffs had been proved on record, much less execution of the agreement to sell. However, the courts below non-suited the plaintiffs on the ground that defendant No.1 was not owner of the property. The plaintiffs have not been able to prove ownership of defendant No.1. The suit against defendant No.1 was dismissed under Order 9 Rule 9 CPC and the same had been affirmed by the appellate court. However, dismissal of the suit would not entail into non-exercise of discretion as defendant No.1 had died and the rights were succeeded by his legal representatives including defendant No.2. Thus, there is illegality and perversity in the impugned orders, much less substantial question of law arise for determination by this court.

I have heard learned counsel for the appellant and appraised the paper book.

It is a matter of record that the suit against defendant No.1 was dismissed. The attorney executed by defendant No.1 in favour of defendant No.2 had not been registered and even defendant No.2 after filing of the written statement was also proceeded ex-parte. Both the courts below arrived at a finding that

ownership of defendant No.1 has not been proved, particularly for the reason that the suit qua defendant No.1 was dismissed.

Keeping in view the fact that the suit against defendant No.1 was dismissed and the said order had attained finality, in my view, the lower appellate court granted more relief than the one granted by the trial court by ordering refund of double the amount of earnest money along with 6% simple interest per annum.

I am of the view that such finding is legal and justified. Keeping in view the aforementioned facts, I do not intend to differ with the finding rendered by both the courts below which is based on appreciation of oral and documentary evidence. I do not find any illegality or perversity in the aforementioned judgment and decree of the appellate court.

No substantial question of law arise for determination by this Court.

In view of what has been observed above, the appeal is devoid of merits, accordingly, the same is dismissed.

(AMIT RAWAL)
JUDGE

December 10, 2015
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