

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

105

C.M. Nos. 8308-10-C of 2013 and
RSA No. 3111 of 2013

Date of decision: 21.10.2015

Joginder Singh

....APPELLANT

VERSUS

Lashkar Singh and another

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Vishal Satija, Advocate,
for Mr. Vivek K. Thakur, Advocate,
for the appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

C.M. No. 8308-C of 2013

Prayer in this application is for exemption from filing certified copy of the judgment dated 18.04.2011.

Prayer granted. Filing of certified copy of the judgment dated 18.04.2011 is dispensed with.

Application stands disposed of.

C.M. No. 8309-C of 2013

Prayer in this application is for condonation of delay of 47 days in re-filing the appeal.

For the reasons mentioned in the application, which is duly supported by the affidavit of the appellant, the same is allowed. Delay of 47 days in re-filing the appeal stands condoned.

RSA No. 3111 of 2013

Challenge in this appeal is to the judgment and decree passed by the Additional Civil Judge (Senior Division), Nakodar dated 18.04.2011, vide which the suit for possession by way of specific performance of the agreement dated 16.04.2008 stands decreed, against which the appeal preferred by the appellant-defendant stands dismissed by the Additional District Judge, Jalandhar on 30.11.2012

2. It is the contention of the learned counsel for the appellant that respondent No. 1-plaintiff has not been able to prove due execution of the agreement to sell as he has not produced the scribe of the said agreement to sell. His further contention is that the stand of the appellant-defendant was that the said agreement to sell has never been executed and it was a forged and fabricated document, which cannot be given effect to. He, thus, contends that the findings recorded by the Courts below cannot sustain as the same are based upon the misreading of the evidence.

3. I have considered the submissions made by the learned counsel for the appellant and with his assistance, have gone through the impugned judgments passed by the Courts below but am unable to accept the said contentions, as have been raised.

4. Respondent No. 1-plaintiff has proved due execution of the agreement to sell dated 16.04.2008 Ex. P1. Not only he himself has appeared as a witness but another marginal witness Gulbir Singh appeared as PW-2 and proved the due execution of the agreement to sell as well as the receipt of the earnest money by the appellant-defendant. The scribe is not required to be produced. It may not be out of way to mention here that

Jagtar Singh son of Balbir Singh, who was another witness to the agreement

to sell, is the son of the sister of the appellant-defendant and in case, the agreement to sell was a creation of fraud or misrepresentation, he could have been produced by the appellant-defendant in support of his stand. He has not been produced as a witness. Only a bald statement has been made by the appellant-defendant that the agreement to sell is a forged and fabricated document and the same is the result of the fraud, which would not be enough to prove that the said document is of such a nature especially when no other supportive evidence has been produced and after the execution of the agreement to sell has been duly proved, the onus shifted on to the appellant-defendant to prove that the same was not a genuine document and was a forged and fabricated one. The appellant-defendant would have got his signatures verified/proved by comparing the same with his standard signatures and thereafter, got the evidence of an expert in support of his contention but that has not been done. The Courts, therefore, have rightly taken it adversely against him and the inference has, therefore, been accordingly drawn against him. The judgments and decree passed by the Courts below cannot be said to be vitiated because of misreading of the evidence, as has been asserted by the counsel.

5. There being concurrent findings recorded by the Courts below on the facts of the case, which have been found to be based on proper appreciation of the evidence produced by the parties, there is no illegality in the impugned judgments. Further, there is no substantial question of law in the present appeal, which requires consideration of this Court.

6. In view of the above, finding no merit in the present appeal, the same stands dismissed.

In view of the dismissal of the main appeal, no separate orders are required to be passed in this application for stay and, therefore, the same stands dismissed.

October 21, 2015

pj

(AUGUSTINE GEORGE MASIH)
JUDGE