

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

102

Regular Second Appeal No.5037 of 2013 (O&M)

Date of Decision: November 26, 2015

Gurbachan Singh

...Appellant

Versus

Mohan Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Sarju Puri, Advocate
for the applicant-appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM No.13572-C of 2013

Prayer in this application is for condonation of delay of 53 days
in filing the appeal.

The reason for delay, as has been given, is accepted as the same
is duly supported by the affidavit.

The application, is, therefore, allowed.

Delay of 53 days in filing the appeal stands condoned.

CM No.13573-C of 2013

Prayer in this application is for making good the deficiency in
the Court fee.

For the reasons mentioned in the application which is duly
supported by the affidavit, the same is allowed.

The deficient Court fee is permitted to be made good and the
same is taken on record.

RSA No.5037 of 2013

Challenge in this appeal is to the judgment and decree passed
by the Additional Civil Judge (Senior Division), S.B.S. Nagar, dated

07.12.2011 by which the suit filed by respondent No.1-plaintiff for possession by way of specific performance of agreement to sell dated 27.12.2000 executed by Sucha Singh-respondent No.2/defendant No.1 in favour of respondent No.1-plaintiff Mohan Singh for land measuring 8 kanals 8 marlas out of the land measuring 16 kanals 17 marlas, as has been detailed in the head note of the suit, situated in village Mazara Nau Abad, Tehsil and District Nawanshahr, as also for declaration to the effect that the sale deed dated 16.08.2004 executed by respondent No.2/defendant No.1-Sucha Singh in favour of appellant-defendant No.2 is null and void, stands decreed, appeal against the said judgment and decree preferred by respondent No.2-defendant No.1 stands dismissed by the District Judge, Shaheed Bhagat Singh Nagar, on 02.05.2013.

2. It is the contention of learned counsel for the appellant that respondent No.1-plaintiff has not been able to prove the agreement to sell dated 27.12.2000. He contends that the said agreement to sell has been denied by respondent No.2/defendant No.1-Sucha Singh. He contends that primarily at the time when the suit was initiated against appellant-defendant No.2 as also respondent No.2-defendant No.1, the plaintiff and respondent No.2/defendant No.1-Sucha Singh connived and had virtually helped each other in the suit. In support of this contention, he places reliance upon the admission of respondent No.2/defendant No.1-Sucha Singh in his cross-examination with regard to execution of the agreement to sell and the signatures thereon. His further contention is that appellant-defendant No.2 is the *bona fide* purchaser and, therefore, should have been granted the protection as provided under Section 41 of the Specific Relief Act, 1963.

That apart, he contends that the evidence of the power of attorney

Gurbachan Singh, who had appeared on behalf of appellant-defendant No.2 should have been read into evidence by the Courts below and, therefore, the findings on the basis of which the judgments have been recorded by the Courts below, cannot sustain.

3. I have considered the submissions made by learned counsel for the appellant and with his assistance, have gone through the impugned judgments but am unable to accept the same.

4. The first contention of learned counsel for the appellant that respondent No.1-plaintiff has not been able to prove the execution of the agreement to sell, cannot be accepted as he has not only produced the attesting witness, in whose presence the agreement to sell and the receipt was executed, which was duly signed and read over to respondent No.2-defendant No.1, but also the son of the deceased Deed Writer Dharam Pal Kapoor i.e. PW-2 Prem Kumar, Deed Writer. The evidence which has been produced on record clearly establishes with regard to the execution of the agreement to sell. Respondent No.1-plaintiff has also been able to prove that the time for executing the agreement to sell has been duly extended by the duly authorised power of attorney holder on behalf of respondent No.2-defendant No.1. Although a stand has been taken that the power of attorney in favour of Sucha Singh-respondent No.2/defendant No.1 has been cancelled but no date has come forth of such cancellation to prove that such a power of attorney was cancelled. That further proves that the agreement to sell has been rightly executed and so has the time to execute the agreement to sell stood duly extended by the competent person. In the cross-examination, respondent No.2-defendant No.1 has admitted the execution of the agreement to sell as also the receipt and the extension of time for

execution of the agreement to sell.

5. The second contention of learned counsel for the appellant that appellant-defendant No.2 is the *bona fide* purchaser as he has gone through the revenue record, wherein it has not been entered that an agreement to sell has been executed by respondent No.2-defendant No.1 in favour of respondent No.1-plaintiff. Further that he is a Non Resident Indian and, therefore, was not aware of the agreement to sell and, therefore, has the protection being a *bona fide* purchaser, cannot be accepted as he has not appeared in the witness box and the person, who asserts himself to be the power of attorney holder on his behalf and has appeared as a witness i.e. Gurbachan Singh, had admitted that he does not have the power of attorney in his favour with regard to the case in question. He has admitted that he has not been authorised to appear in this case and to make a statement but had come on his own to make the statement. He is, thus, not the attorney of the appellant-defendant No.2, therefore, his evidence could not be read into evidence on behalf of defendant No.2. That apart, it is an admitted position that Shri Gurbachan Singh had no personal knowledge about the agreement to sell between respondent No.2-defendant No.1. The Courts below have, therefore, rightly proceeded to hold that appellant-defendant No.2 has not been able to contradict the evidence led by the plaintiff to prove the agreement to sell, which has been admitted by respondent No.2-defendant No.1 with regard to due execution of the agreement to sell between the plaintiff and respondent No.2-defendant No.1.

6. The assertion of the counsel for the appellant that respondent No.1-plaintiff and respondent No.2-defendant No.1 are hand in gloves with each other and have come together to defeat the right of the appellant-

defendant No.2 which he had acquired on the execution of the sale deed in his favour by respondent No.2-defendant No.1, also cannot be accepted as there is no evidence on record which would establish that he had no knowledge about the agreement to sell entered into between the plaintiff and respondent No.2-defendant No.1, rather it has come on record that the parties are close relatives and know each other very well and also belong to the same village. Merely because the appellant-defendant No.2 is a Non Resident Indian would not be enough to assert that he was not aware of the agreement to sell entered into between respondent No.2-defendant No.1 and respondent No.1-plaintiff.

7. Both the Courts below have returned concurrent findings in detail after properly appreciating the evidence and the same cannot be interfered with as there is no perversity or illegality in the same.

8. No substantial question of law is involved in the present appeal. Therefore, finding no merit in the present appeal, the same stands dismissed.

9. In the light of the dismissal of the appeal, the application for stay i.e. CM No.13575-C of 2013, stands disposed of as infructuous.

November 26, 2015
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE