

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

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Regular Second Appeal No.1364 of 2015 (O&M)

Date of Decision: September 19, 2015

Ashwani Kumar

...Appellant

Versus

Vijay Kumar and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Ajay Pal Singh, Advocate
for the appellant.

Mr. Arihant Jain, Advocate
for the caveators-respondents.

AUGUSTINE GEORGE MASIH, J.

CM No.3866-C of 2015

Prayer in this application is for condonation of delay of 40 days in
filing the appeal.

Notice of motion.

Mr. Arihant Jain, Advocate, accepts notice on behalf of caveators-
respondents.

Caveat discharged.

He states that he has no objection to the condonation of delay in
filing the appeal.

In view of the above, the present application is allowed.

Delay of 40 days in filing the appeal stands condoned.

RSA No.1364 of 2015 (O&M)

Suit for specific performance of sale deed dated 22.03.2006
regarding the suit property to get the said sale deed registered from the
Sub Registrar, Sunam, and to restrain the appellant-defendant from alienating

the suit property in any manner filed by the respondents-plaintiffs stands decreed by the Additional Civil Judge (Senior Division), Sunam, on 23.01.2012, against which appeal preferred by the appellant-defendant has been dismissed on 19.08.2014 which has been challenged in the present appeal.

2. It is the contention of the learned counsel for the appellant-defendant that an agreement in writing was entered into between the appellant-defendant and father of respondents-plaintiffs to sell the suit property for an amount of ₹10,50,000/- on 12.10.2005 when an amount of ₹50,000/- was given by the father of the respondents-plaintiffs to the appellant-defendant and thereafter on 18.10.2005, a regular agreement to sell was entered into between the respondents-plaintiffs and appellant-defendant and at that time, the respondents-plaintiffs paid an amount of ₹1,50,000/-. The date for execution of the sale deed was fixed as 16.01.2006. Since the amount agreed for selling the suit property was ₹10,50,000/-, there was no question for selling the same for an amount of ₹7,87,500/-, which has been mentioned in the agreement to sell dated 22.03.2006. When this fact came to the notice of the appellant-defendant, he refused to get the same registered. The respondents-plaintiffs had broken the locks in the absence of appellant-defendant and misappropriated the machinery and goods lying therein. On an assurance given by the respondents-plaintiffs that the agreement will be scribed for an amount of ₹10,50,000/-, the stamp papers were purchased by the appellant-defendant and he had signed the same leaving it to the respondents-plaintiffs to scribe the same as per the earlier agreement dated 18.10.2005, which has not been done. His further assertion is that since the writings dated 12.10.2005 and 18.10.2005 have been concealed by the respondents-plaintiffs and the original thereof have not been produced, the permission for leading secondary evidence was required, which has not

been sought from the Court and, therefore, the judgments and decree passed by the Courts below cannot be sustained. In support of this contention, he has placed reliance upon the judgment of this Court passed in case titled as *Karnail Singh Versus Kalra Brothers 2009 (154) PLR 693*. He contends that the judgments and decree passed by the Courts below cannot sustain and deserve to be set aside.

3. Counsel for the caveators/respondents-plaintiffs, on the other hand, contends that it is correct that earlier two agreements were entered into, as has been asserted by the counsel for the appellant-defendant, but with the coming into existence of the subsequent sale deed, which has been duly signed by the appellant-defendant, which has been duly proved, specially when the possession of the land has also been handed over and the amount has also been paid as per the sale deed dated 22.03.2006, the contentions of the counsel for the appellant-defendant cannot be accepted and the judgment, reliance whereon has been placed by the counsel for the appellant-defendant, would not be applicable to the case in hand. He prays for dismissal of the appeal.

4. The first assertion, on which basic reliance has been placed by the counsel for the appellant-defendant, is that the respondents-plaintiffs have concealed about the writing dated 12.10.2005 and the agreement dated 18.10.2005 and, therefore, they are not entitled to the benefit, as has been claimed in the civil suit, suffice it to say that the earlier writing and agreement dated 12.10.2005 and 18.10.2005 pertain to property as well as machinery for which sale consideration was ₹10,50,000/- whereas the sale deed dated 22.03.2006 pertain to immovable property only, the consideration amount is mentioned as ₹7,87,500/-. That explains the difference in the consideration amount mentioned in the writing and the agreement and in the sale deed. The

respondents-plaintiffs have been able to prove the execution of the sale deed as they have produced the marginal witnesses Jagroop Singh, Narain Dutt Registry Clerk, in the office of Sub Registrar and respondent-plaintiff No.1 himself has appeared in support of his assertions. The sale deed has been scribed and was signed by the parties but the appellant-defendant did not get the same registered.

5. As regards, sale consideration of both of the suit property and the machinery, the respondents-plaintiffs have been able to prove that it has been actually paid. Respondent-plaintiff No.1 has stated in his cross-examination that he had shown the amount with regard to the sale consideration of not only the property as also the scrap and the machinery in his income-tax returns. The sale consideration having changed hands is also apparent from the fact that the possession of the property was handed over to the respondents-plaintiffs. It is difficult to believe that a literate person would have signed the sale deed without reading the same and would hand over the possession of the property without receiving the consideration amount. Assertion has been made that the possession of the property had been taken forcibly but no complaint has been filed to any authority with regard to taking of forcible possession of the suit property. It may not be out of way to mention here that the appellant-defendant had moved an application to the Sub Registrar for the refund of the amount of stamp papers, however, the same has been rejected by order dated 26.04.2007 by observing that the appellant-defendant wanted to grab the amount of stamp papers, which amount is generally provided by the purchaser.

6. The judgment on which reliance has been placed by the counsel for the appellant-defendant *Karnail Singh's case (supra)*, would not be applicable to the facts of the present case as it deals with a situation, where a

suit for recovery was filed placing reliance upon the bahi entries but the same was not produced by taking a plea that the original bahi entries have been lost. No attempt was made by the party to prove the bahi entries by adducing secondary evidence. Merely because a photocopy of the bahi entries has been produced without seeking proper permission of the Court or without fulfilling the requirement of the statute for leading secondary evidence, the same cannot be relied upon. Present is a totally different case, as has been depicted above.

7. Both the Courts below have returned concurrent findings 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 itself, the application for stay i.e. CM No.3867-C of 2015, also stands disposed of as infructuous.

September 19, 2015
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE