

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

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Regular Second Appeal No.1394 of 2015 (O&M)

Date of Decision: September 11, 2015

Sharda Bansal

...Appellant

Versus

Smt. Balbir Kaur and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Ankit Joshi, Advocate
for the appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM No.3954-C of 2015

Prayer in this application is for condonation of delay of 63 days
in re-filing the appeal.

The reason assigned is that the appeal having been filed within
limitation was returned by the Registry with certain objections when the
Clerk inadvertently placed the paper book in some other file because of the
mix up in the office, the same could not be re-filed within time which
resulted in delay of 63 days in re-filing the appeal. The application is
supported by an affidavit of the Clerk of the counsel.

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

Delay of 63 days in re-filing the appeal stands condoned.

CM No.3955-C of 2015

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

For the reasons mentioned in the application and for the reason
that the deficiency in the Court fee has been made good, the present
application is allowed.

The deficient Court fee appended along with the appeal is taken on record.

RSA No.1394 of 2015 (O&M)

Challenge in this appeal is to the judgments and decree passed by the Courts below, by which the suit for specific performance of the agreement to sell dated 07.08.2009 and for mandatory injunction directing respondents-defendants to get the mutation of inheritance of Didar Singh sanctioned in their favour and to execute and register the sale deed in favour of the appellant-plaintiff, stands dismissed by the Civil Judge (Junior Division), Ludhiana, on 12.03.2012, against which the appeal preferred by the appellant-plaintiff, also stands dismissed on 03.07.2014 by the Additional District Judge, Ludhiana.

2. It is the contention of the counsel for the appellant-plaintiff that a written agreement to sell was entered into between the appellant-plaintiff and Smt. Balbir Kaur, respondent-defendant No.1. As per the said agreement, the amount fixed for sale of the property as detailed in the head note of the suit, was ₹2,00,000/- out of which an amount of ₹1,70,000/- was paid and the possession was also handed over to the appellant-plaintiff. The sale deed was to be executed on 01.11.2009. On the said date i.e. 01.11.2009, the appellant-plaintiff approached the office of Sub Registrar, Dehlon but respondent-defendant No.1 showed her inability to appear on the said date and, therefore, requested that the registration be got done on 31.12.2009. On that date also, the appellant-plaintiff came present before the Sub Registrar, Dehlon but respondent-defendant No.1 did not appear. On 31.12.2009, a telephonic message was received by the appellant-plaintiff that respondent-defendant No.1 could not come and, therefore, the next date

fixed was 29.01.2010 but on the said date the Sub Registrar being on leave, the matter with regard to registration of the sale deed was deferred to 01.02.2010 but on the said date also, respondent-defendant No.1 failed to appear. Thereafter efforts were made to get the sale deed executed but when nothing succeeded, the suit was filed on 23.02.2010 for specific performance and injunction.

3. Counsel contends that the appellant-plaintiff was all through ready and willing to perform her part of the contract and, therefore, there is no reason why the Courts below should have not granted the relief of the decree of specific performance as per the agreement to sell dated 07.08.2009. He contends that a mere stray statement in the cross-examination of the appellant-plaintiff that the agreement to sell was scribed and executed as a security for money transaction, cannot be taken against the appellant-plaintiff and the statement as also the document and its intent should have been gone into by the Courts below and granted the relief as prayed for. In support of his contention, he has placed reliance upon the judgment of the Supreme Court passed in case titled as *Laxmibai (Dead) Through LRs. and another Versus Bhagwantbuva (Dead) Through LRs. and others 2013(2) Civil Court Cases 071 (S.C.)*. He, therefore, contends that the judgments and decree passed by the Courts below deserve to be set aside.

4. I have considered the submissions made by the counsel for the appellant-plaintiff and with his assistance, have gone through the judgments passed by the Courts below.

5. Although the appellant-plaintiff has produced ample evidence to show that the agreement to sell was executed on 07.08.2009 and the

Courts have also accepted the factum of the readiness and willingness on the part of the appellant-plaintiff to perform her part of the contract but if the intent of the parties is not actual sale of the property rather it was for the purpose of securing the loan amount which was forwarded to respondent-defendant No.1, as in the present case, which is apparent from the admission on the part of the appellant-plaintiff in her cross-examination that the said agreement to sell was executed as a security for money transaction, it cannot be said that it was with an intention of selling the property. The judgment of the Supreme Court in the case of *Laxmibai (supra)* on which reliance has been placed by learned counsel for the appellant-plaintiff, would not be applicable to the case in hand as in the present case there is a clear and categorical admission on the part of the appellant-plaintiff that the agreement to sell was scribed and executed as a security for the money transaction. If that be so, the judgments passed by the Courts below granting the benefit of alternative relief of refund of the amount of ₹1,70,000/- along with interest at the rate of 9% per annum from the date of execution of the agreement till the date of decree and thereafter 6% per annum from the date of decree till its realisation, cannot be faulted with.

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

September 11, 2015
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE