

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

Regular Second Appeal No.3161 of 2015 (O&M)
Date of decision:31.10.2015

Bikram Singh @ Vikram Singh ... Appellant

versus

Balwinder Singh Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Pankaj Mohan Kansal, Advocate,
for the appellant.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ?No.
3. Whether the judgment should be reported in the digest ?No.

K.Kannan, J. (Oral)

CM No.7592-C of 2015

For the reasons stated in the application, delay of 6 days
in refiling the appeal is condoned.

Application stands disposed of.

CM No.7594-C of 2015

For the reasons stated in the application, delay of 66
days in filing the appeal is condoned.

Application stands disposed of.

Regular Second Appeal No.3161 of 2015 (O&M)

1. The appeal is at the instance of the defendant who has

suffered a decree for specific performance brought at the instance of plaintiff on the basis of an agreement purporting to sell the property for ₹70,000/-. The contention in defence was that there was actually an agreement for selling the property for ₹10 lakhs and ₹2 lakhs had been received as advance but the plaintiff had obtained the signatures by fraud stating that if ₹10 lakhs were to be recited as consideration, stamp duty liability will be high and, therefore, the document could be written for ₹70,000/-. The defendant, who put up such a contention, did not do any more than file a document and made himself scarce at the trial. The trial Court had allowed for 10 opportunities of adjournments for production of evidence and finding that the defendant had not appeared to give his evidence, closed his evidence and proceeded to consider the document filed by the plaintiff and the witnesses and granted a decree on the basis of the agreement that stipulated a consideration of ₹70,000/-. The defendant gave no explanation even at the stage of appeal as to his absence at the trial court but made a vain bid to prove that the value of the property was more by showing an advertisement said to have been issued by him offering to sell the property at ₹10 lakhs. The appellate court observed that the advertisement had been issued during the pendency of proceedings and the so-called advertisement said to have been issued prior to the suit was not filed in court. The court also observed that the pleading regarding advertisement was

vague in that the defendant had not even mentioned the name of the publication under which such an advertisement had been issued.

2. Finding that there was no plea other than a case of fraud or coercion and the burden of such fraud not having been discharged by the defendant by proving any vitiating circumstances by standing at the trial and allowing his own assertions in chief-examination brought through a proof affidavit to be tested in the cross-examination, the courts below held that the defence of fraud cannot be accepted and the decree which was granted by the trial court was bound to be confirmed. In second appeal, the counsel for the defendant-appellant reiterates the very same argument that there had been an agreement of sale for ₹10 lakhs and the document was also filed as DW1/A. I am afraid, I may not be able to make use of the same, particularly in view of the fact that the document produced in chief-examination would require to be eschewed when the defendant did not allow himself to be cross-examined by his persistent absence for more than 10 occasions before the trial Court closed the defendant's side. The defendant has also taken 4 opportunities before this court earlier in offering to produce the advertisement said to have been issued prior to the institution of the suit that suggested that the value of the property was even ₹10 lakhs. Till date, publication has not been produced. As I have observed that even at the trial Court and the appellate Court, the defendant was only

making reliance of an advertisement issued subsequent to the institution of the suit and could not produce the advertisement said to have been issued earlier.

3. I find that there is no merit at all in the appeal and dismiss the same confirming the judgment of the appellate court.

(K.KANNAN)
JUDGE

31.10.2015
sanjeev