

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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RSA No. 1776 of 2014 (O&M)

Date of decision : March 17, 2015

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Ranjit Singh

.....Appellant

Versus

Bachan Kaur and others

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Amit Arora, Advocate for the appellant.

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1. *Whether Reporters of Local Newspapers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

RITU BAHRI, J

This regular second appeal has been filed against the trial Court judgment dated 18.2.2008 passed by the Civil Judge (Junior Division) Tarn Taran, whereby the suit of the plaintiff was dismissed and the judgment of the appellate Court dated 1.3.2011 passed by the Additional District Judge, Tarn Taran, whereby the appeal against the judgment of the trial Court was dismissed.

The plaintiff-appellant (hereinafter referred to as 'the plaintiff') had filed a suit for possession by way of specific performance. Defendants no. 1 & 2/respondents no. 1 to 4 (hereinafter referred to as 'defendants no. 1 & 2') executed a sale deed in respect of land measuring 3 kanals 18 marlas being 78/937

share out of land measuring 46 kanals 7 marlas as detailed in the head note of the plaint and they also agreed to sell 1/48 share of land measuring 1 kanal bearing khasra no. 31/26 i.e share of the Well for consideration of Rs.75,000/- in favour of plaintiff. Defendants executed sale deed in lieu of contract between the parties and also purchased stamp papers for Rs. 4500/- from Treasury Office, Tarn Taran. After receiving the sales consideration, defendants no. 1 & 2 did not appear before the Sub Registrar to execute the sale deed and get it registered. The defendants no. 1 & 2 further ignoring the sale deed executed in favour of the plaintiff, transferred the land in favour of defendant no.3 without consideration. Before the trial Court, the suit was dismissed by recording a finding that there was no evidence led by the plaintiff to show that consideration of Rs.75,000/- was made at the time of execution of the sale deed i.e 22.7.1999. In order to prove the execution of the sale deed before the trial Court, witnesses PW-2 and PW-3 came for examination in chief but did not appear for cross-examination. Except the plaintiff PW-4, no one has come forward to say that the amount was delivered in the village to the vendor and as per cross-examination of the plaintiff PW-4, he has also admitted that on 22.7.1999, witness Surjit Singh and Deepo had come to his house at about 11.30/12 p.m when he had made the payment to vendor. At the same time he admitted that dispute arose between them and they came to know about sale deed dated 26.7.1999. In cross-examination, he admitted that on 22.7.1999, he did not deposit the

registration charges with registration clerk. He further admitted that he did not present the original jamabandi in the file along with the suit. The documents which were presented before the Sub Registrar remained in black and white on which the alleged sale deed was alleged to have been executed. At the same time defendants no. 1 & 2 stated that they had bona fidely sold the land in favour of defendant no.3 and proved on file the certified copy of sale deed as Ex. D3 and its endorsement Ex. D-3/A. As per the cross-examination of PW-1, Sulakhan Singh, Deed Writer, sales consideration was not paid in his presence. It was paid in the village. PW-2 Sawaran Singh, Lamberdar and PW-3 Harbhajan Singh did not appear for cross-examination and hence their statements were not considered to be trust worthy and reliable. The plaintiff examined expert Ex.P-4 Arvind Sood and gave his report Ex. P-4. His report was also not taken into consideration as he admitted in his cross-examination that the thumb impression were completely super imposed and signature S-1 to S-6 had been taken from the photocopy which is otherwise not admissible as per law. He admitted that there was cutting on the back side of the stamp papers and he had not deposited the registration charges on the stamp paper. Another lacunae in the suit was that he plaintiff had not produced the original deed on the basis of which the present suit had been filed. The trial Court held that the plaintiff had failed to prove the execution of the said sale deed in favour of defendants no. 1 & 2 and failed to prove the delivery of consideration to them. This issue was decided

against the plaintiff.

Another fact which the trial Court had taken into consideration was that plaintiff during the pendency of present suit also approached the Sub Registrar by filing application under Section 36 of Indian Registration Act, 1908 which was dismissed by Sub Registrar on 6.4.2000 vide Ex. D-6 again plaintiff approached the ADC-Cum-Registrar, Amritsar by filing the appeal against that order which was also dismissed by the Court vide order dated 22.11.2002. Trial Court placed reliance upon the judgment of the Supreme Court in '**Gopal Saran vs. Satyanararayna**' AIR 1989 SC 1141, wherein it was held that it is not safe to rely on examination-in-chief. Reliance was also placed upon the judgment of Hon'ble the Supreme Court in '**Chandeshwar Yadav vs. Smt. Radha Devi and others 2001 (2) Apex Court Journal 96 (S.C)**'. In that case sale deed was executed and entire consideration amount was paid. Defendant failed to turn up for registration and the Registrar declined to register sale deed. Two options available were either to file suit under Section 77 Registration Act within 30 days of refusal or being a suit for specific performance of an agreement to sell within period of limitation. The plaintiff during the pendency of the present suit has initiated the proceedings under Section 36 of the Indian Registration Act, 1908. Availing of the subsequent remedy was not admissible to prove the sale deed. The trial Court after considering the evidence has dismissed the suit of the plaintiff.

The suit of the plaintiff was dismissed on 18.2.2008 and

the plaintiff chose to file the appeal before the lower Appellate Court on 21.5.2008 along with an application under Section 5 of the Limitation Act. Delay was not explained despite number of opportunities. The delay was not condoned and the application was dismissed and as a consequence thereof, the appeal filed by the plaintiff against the judgment of the trial Court was also dismissed on 1.3.2011.

A perusal of both the judgments passed by the Courts below shows that this appeal was kept pending for a period of three years and after a period of three years, the appeal was dismissed without condoning the delay. The present RSA had been filed along with the application bearing C.M No. 4324-C of 2014 for condoning the delay of 842 days in filing and C.M No. 4323-C of 2014 for condoning the delay of 48 days in refiling the regular second appeal. The delay has been explained in the application. It is stated that Appellate Court dismissed the appeal on 1.3.2011 when the appellant was staying in Barailey, UP and was not aware of the orders and thereafter in the month of February 2013, when the appellant inquired about the status of the appeal from his counsel, he came to know that the same was dismissed vide order dated 1.3.2011. A perusal of the judgment passed by the Appellate Court shows that after framing the issues for condonation of delay, a number of opportunities had been given to the appellant to lead his evidence which he chose not to do. In the present application for condonation of delay in filing the appeal, it has not been explained why he did not

lead evidence before the Appellate Court. After a period of about 2 years he made an effort to know about the fate of the appeal. His approach seems to be very casual.

After going through the judgments passed by the trial Court, the plaintiff has miserably failed to prove that any sales consideration had been paid to the defendants no. 1 & 2 pursuant to the agreement to sell dated 22.7.1999.

No ground is made out to condone the delay in filing and refiling the present regular second appeal and the same is dismissed on account of delay as well as on merits.

March 17, 2015
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(**RITU BAHRI**)
JUDGE