

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 5490 of 2014 (O&M)
Date of decision : October 13, 2015

Smt. Ravinder Kaur and others

..... Appellants

Versus

Smt. Krishna Rani

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Saurabh Bajaj, Advocate
for the appellants.

1. Whether reporters of local papers 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?

Amit Rawal, J (oral).
CM No. 13147-C of 2015

This is an application under Section 5 of Limitation Act seeking condonation of delay in filing the appeal.

For the reasons stated in the application, which is duly supported by an affidavit, delay of 227 days in filing the appeal is condoned.

The application stands disposed of.

RSA No. 5490 of 2015

The appellants-defendants is in Regular Second Appeal against the concurrent finding of fact whereby the suit of the

respondent-plaintiff seeking possession of the house having area 30' x 45' = 150 sq.yards consisting of three rooms, situated at Gali No.1, opposite Shamsheer's Milk Dairy, Shiv Colony, Kaithal Road, Near Aggarwal Flour Mill, Karnal has been decreed.

Learned counsel for the appellant submits that an agreement to sell dated 23.8.1999 was entered into with the predecessor-in-interest of the appellants with Narinder Kumar-plaintiff and as per the agreement to sell total sale consideration in respect of the property in question was ₹2 lacs. The cause of action seeking execution and registration of the sale deed would arise only when the entire sale consideration which was to be paid in a deferred mode had been paid to the vendor. The period for payment of entire sale consideration was to expire in the year 2007 whereas the suit seeking possession has been filed in the year 2006, therefore, the suit was pre-mature. At the best, the cause of action, if any, for the plaintiff was to seek recovery of the balance amount and not possession.

He further submits that the entire sale consideration as agreed had been paid and the courts below have failed to draw an adverse inference against the plaintiff and in favour of the appellants as the original agreement to sell has not seen light of the day. The aforementioned facts have not been noticed by the courts below. Therefore, there is illegality and perversity, much less substantial question of law arise for determination by this court.

I have heard learned counsel for the appellant and appraised the paper book.

No doubt that the agreement to sell dated 23.8.1999 has not been proved. There is no limitation to seek possession of the property on the basis of title. Narinder Kumar, the alleged vendor before the institution of the suit by the mother, had died. Even the vendee Ramesh Kumar had also died. The remedy, if any, for the appellant-defendant was to file a counter claim and seek specific performance of the agreement to sell on the premise that they had paid the entire sale consideration as per the terms and conditions of the agreement to sell. Every payment of ₹2,000/- purported to be paid per month was to be endorsed on the back side of the agreement against the valid receipts. The onus to prove the entire sale consideration was on the appellants-defendants. Once the respondent-plaintiff did not produce the original, nothing prevented the defendant to move an application under Order 11 Rule 14 CPC for production of original documents. Had such application been contested, much less allowed and agreement to sell had not been brought on record, the defendants could have lead the secondary evidence in order to prove the agreement to sell, much less the payment, as per terms and conditions of the agreement. The appellants-defendants have failed to prove that whether there was a breach or default in payment of sale consideration which was to be paid in a deferred manner/mode.

Admittedly, the appellants- defendants were put into possession in part performance of the agreement to sell and have not claimed any specific performance of the agreement to sell. Once the appellants-defendants have miserably failed to prove the

payment of entire sale consideration, the status of the defendants is nothing but that of a trespasser. Since the appellants-defendants were in occupation/possession of the property, the remedy, for the plaintiff was to seek possession of the same and not for recovery of the balance amount, particularly when preceding to filing of the suit a legal notice dated 6.3.2002 was served upon Ramesh Kumar to make payment of balance sale consideration, indicating therein that failing which the agreement to sell deemed to have been cancelled. The aforementioned notice had not been replied. In essence, the agreement to sell was cancelled.

There is another aspect of the matter that the appellants-defendants are claiming possession in part performance of the agreement to sell as per Section 53-A of the Transfer of Property Act, 1882. Interpretation of provisions of Section 53-A of the Transfer of Property Act, 1882 are no longer longer res integra, it specifically provides that the rights have to be exercised, which have been provided as per the terms and conditions of the agreement to sell. The respondent-plaintiff has exercised the right claiming possession since the agreement to sell was cancelled through the legal notice.

I do not intend to differ with the finding rendered by both the courts below which is based on appreciation of oral and documentary evidence. I do not find any illegality or perversity in the aforementioned judgment and decree of the appellate court.

No substantial question of law arise for determination by this Court.

In view of what has been observed above, the appeal is devoid of merits, accordingly, the same is dismissed.

(AMIT RAWAL)
JUDGE

October 13 , 2015
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