

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

RSA No.6195 of 2015 (O&M)

Date of Decision: December 21, 2015

Naginder Singh

.... Appellant

vs.

Charanjit Singh and another

.. Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. R.K. S. Brar, Advocate for the appellant.

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?*

Kuldip Singh J.(Oral)

Impugned in the present regular second appeal is the judgment and decree dated 10.09.2012 passed by learned Addl. District Judge, Ludhiana, affirming the judgment and decree dated 17.07.2008 passed by learned Addl. Civil Judge (Sr. Divn.), Jagraon, vide which the suit of the plaintiff for possession by way of specific performance of the agreement to sell dated 18.05.1999, was decreed.

According to the plaintiff, defendant No.1 Karam Singh entered into an agreement to sell dated 18.05.1999 to sell the suit land to the plaintiff for ₹4,00,000/-. ₹3,90,000/- were paid as earnest money and ₹10,000/- were to be paid by the plaintiff to defendant No.1 at the time of execution and registration of the sale deed i.e. on 30.11.2000. However, before the date fixed for the execution and

registration of the sale deed, defendant No.1 sold the suit property to his brother defendant No.2 on 30.07.1999 for ₹4,83,000/-. Defendant No.1 did not contest the suit and was proceeded against ex parte.

In the written statement, defendant No.2 took the plea that the agreement to sell in question is a hoax document and he is bonafide purchaser without notice and his right is protected under the Transfer of Property Act, 1882.

I have heard learned counsel for the appellant and have also carefully gone through the case file.

Before the lower court, it was proved that the agreement to sell in question has been duly executed. Defendant No.2 is the brother of defendant No.1. Therefore, the question of being bonafide purchaser does not arise. Almost the entire sale consideration was paid to defendant No.1 by the plaintiff, except a meager amount of ₹10,000/-. There are concurrent findings of both the courts below.

Learned counsel for the appellant-defendant No.2 has argued that it was a loan transaction. It was admitted by the witness of the plaintiff that the plaintiff is a commission agent and defendant No.1 used to visit his shop.

However, it was not proved that it was a loan transaction. Defendant No.1 did not contest the suit. It was for defendant No.1 to prove the said facts. Further defendant No.2 is not a bonafide purchaser. Defendant No.1 is the real brother of defendant No.2. The findings of facts have been recorded by both the courts below. No substantial question of law arises in the present appeal.

It is stated that there is delay of 791 days in refiling the appeal on the ground that the paper book of the present appeal was put in the wrong brief and dumped the same in decided case by the Clerk of the counsel for the appellant. The application is supported by an affidavit of learned counsel for the appellant.

I am of the view that it cannot be believed that the file was dumped in the wrong brief and remained there for 791 days, which comes to more than two years. Therefore, no ground is made out to condone such huge delay in refiling of the present appeal.

As such, the application for condonation of delay of 791 days in refiling the appeal is dismissed and accordingly, the main appeal also stands dismissed on merits also.

December 21, 2015
sarita

(KULDIP SINGH)
JUDGE