

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

**C.M. Nos.2428 to 2430 C of 2015 &
R.S.A. NO.815 OF 2015**

DATE OF DECISION: OCTOBER 12, 2015

Krishan Lal

.....Appellant

VERSUS

Satish Kumar and another

....Respondents

CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH

1. Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

**Present: Mr. Vikas Goyal, Advocate,
for the appellant.**

**Mr. Suresh Kumar Aneja, Advocate,
for caveator-respondent No.1.**

AUGUSTINE GEORGE MASIH, J. (ORAL)

C.M. No.2428 C of 2015

C.M. is allowed.

**Delay in affixing the deficient court fee is condoned for the
reasons mentioned in the application.**

C.M. No.2429 C of 2015

**Prayer in this application is for condonation of delay of 38 days
in refiling the accompanying appeal.**

**For the reasons mentioned in the application, which are
supported by an affidavit, the present application is allowed and delay of 38
days in refiling the appeal stands condoned.**

C.M. No.2430 C of 2015 and R.S.A. No.815 of 2015

Challenge in this appeal is to the judgement and decree passed by the Civil Judge (Junior Division), Fazilka, dated 13.02.2013, vide which the suit for possession by way of specific performance of agreement to sell dated 19.03.2007 executed by the appellant-defendant No.1, whereby land measuring 33 kanals, mentioned in detail in the head note, situated in the revenue estate of Village Siwana, Tehsil Fazilka, in favour of the respondent-plaintiff, has been decreed and the appeal preferred against the same by the appellant-defendant dismissed on 10.09.2014 by the Additional District Judge, Fazilka.

It is the contention of counsel for the appellant that the respondent-plaintiff was not ready and willing to perform his part of the contract as the agreement to sell dated 19.03.2007 clearly indicated that the sale deed was to be executed on or before 02.05.2007. On 02.05.2007, the respondent-plaintiff did not execute the sale deed and got an extension for doing the needful and with the mutual consent of the parties, the date was extended to 04.06.2007. On the said date, the appellant-defendant was all through present in the office of the Sub Registrar, Fazilka, and this aspect has been duly proved on the basis of the evidence brought on record but the respondent-plaintiff did not execute the sale deed. Thereafter he received a notice through counsel dated 05.06.2007 from the respondent-plaintiff, according to which the date of execution of the sale deed was pointed out to be as 12.06.2007, on which date again the appellant-defendant was present but the respondent-plaintiff again did not execute the sale deed. Counsel for the appellant has further asserted that in the jamabandi for the year 2001-02,

Ex.P5, the land was shown to be mortgaged with Allahabad Bank and the Punjab National Bank and there is no mention of the land being mortgaged with the State Bank of India, Fazilka Branch, and, therefore, the mortgage, if any, which has been sought to be pressed into service by the Courts below, as per the Jamabandi Rapat No.10 dated 06.09.2005, showing the mortgage, was not the responsibility of the appellant-defendant to redeem as there was no such mention in the agreement to sell. He further contends that the land was only 9 kanals, which was mortgaged with the State Bank of India, Fazilka Branch, which was not the subject matter of the agreement to sell. He, thus, contends that the respondent-plaintiff, being not ready to execute his part of the contract, cannot take the benefit of his inaction by filing a suit for specific performance against the appellant-defendant, when he was always ready and willing to perform his part of the contract. He, thus, contends that the judgements and decree passed by the Courts below cannot sustain and deserves to be set-aside.

These contentions of counsel for the appellant cannot be accepted in the light of the fact that as per the agreement to sell dated 19.03.2007 (Ex.P1), the appellant-defendant was to redeem the land in question, which was mortgaged with the Banks prior to execution of the sale deed. Further, as is apparent from the pleadings and the evidence brought on record, a substantial amount was paid to the appellant-defendant by the respondent-plaintiff at the time of execution of the agreement to sell and on subsequent date i.e. 28.04.2007. Further, it has been proved that the respondent-plaintiff had funds available in his bank account to pay the remaining amount of sale consideration on all dates fixed for execution of sale deed. The findings as recorded by the Courts below clearly establish

that on the date when the sale deed was to be executed, the land was not redeemed and was mortgaged with State Bank of India, therefore, there being a charge on the same, the respondent-plaintiff was justified in not getting the sale deed executed, especially when the appellant-defendant could not have executed the same.

Both the Courts below have returned concurrent findings after properly appreciating the evidence and the same cannot be interfered with as there is no perversity or illegality in the same.

No substantial question of law is involved in the present appeal. Therefore, finding no merit in the present appeal, the same stands dismissed.

Since the main appeal stands dismissed, C.M. No. 2430 C of 2015 for staying the operation of the impugned judgement and decree is also dismissed.

October 12, 2015
khurmi

(AUGUSTINE GEORGE MASIH)
JUDGE