

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 3349 of 2012
Date of decision : March 11, 2016

Gurmel Singh

..... Appellant

Versus

Asha Rani (deceased) through L.Rs and another

..... Respondents

RSA No. 4473 of 2012

Smt. Asha Rani (deceased) through L.Rs

..... Appellant

Versus

Gurmel Singh and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:-

Mr. H. S. Aujla , Advocate for
Mr. N. S. Dandiwal, Advocate
for the appellant in RSA No. 3349 of 2012.

Mr. Nandan Jindal, Advocate
for the appellants in RSA No. 4473 of 2012.

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.2830-C of 2016 in RSA No. 3349 of 2012

This is an application under Order 22 Rules 4 read
with Section 151 CPC for bringing on record the legal representatives

of respondent-Asha Rani who is stated to have died on 22.11.2015,duly supported by an affidavit. The legal representatives of the aforementioned respondent are permitted to be brought on record as mentioned in the application subject to all just exceptions.

Amended Memo of Parties has already been annexed, the same is taken on record.

Registry is directed to place it at an appropriate place.

The application is disposed of.

CM No.12520-C of 2012 in RSA No. 4473 of 2012

This is an application under Section 149 read with Section 151 CPC for making good the deficiency in court fees.

The application is allowed.

Permission granted to make good the deficiency in court fee.

CM No.12521-C of 2012 in RSA No. 4473 of 2012

This is an application under Section 151 CPC seeking condonation of delay in refiling the appeal.

For the reasons stated in the application, which is duly supported by an affidavit, delay of 5 days in refiling the appeal is condoned.

The application stands disposed of.

CM No.12522-C of 2012 in RSA No.4473 of 2012

This is an application under Section 5 of the 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 14 days in filing the appeal is condoned.

The application stands disposed of.

RSA No. 3349 and 4473 of 2012

This order of mine shall dispose of two appeals bearing No.RSA No.3349 of 2012 and 4473 of 2012. RSA No. 3349 of 2012 has been filed at the instance of the vendee and RSA No. 4473 of 2012 has been filed at the instance of the vendor.

The agreement to sell dated 28.5.1999 in respect of the suit property was allegedly entered into between the appellant-plaintiff and defendant No.1 for a total sale consideration of ₹2 lacs against an earnest money of ₹1.5 lacs in respect of land measuring 2 ½ Marlas.

Learned counsel appearing on behalf of the appellant in RSA No. 3349 of 2012 submits that defendant No.2 cannot be said to be a bona fide purchaser and both the courts below have gravely erred in granting alternative relief instead of discretionary relief under Section 20 of the Specific Relief Act, 1963 as direct and cogent finding had been brought in proving of the agreement to sell, though, during the currency of the agreement to sell defendant No.1 had sold the land to defendant No.2 vide sale deed dated 17.5.2000.

Learned counsel appearing on behalf of the appellant in RSA No. 4473 of 2012 submits that the parties are residents of Moga whereas the stamp papers for agreement to sell

were purchased from Jagraon. The agreement to sell was emphatically denied, trial court ought not to have granted alternative relief entitling the plaintiff to receive double the amount of earnest money along with interest @ of 9% per annum from the date of suit till the date of decree and future interest @ 6% per annum from the date of decretal amount till the realization of the entire amount, thus urges this court to formulate substantial questions of law for adjudication of the present appeal.

I have heard learned counsel for the appellant in both the appeals, appraised the paper books and of the view that there is no merit in the appeals, for the reason that the agreement to sell viz-a-viz sale deed dated 17.5.2000 is dated 08.6.1998 which is prior to the one for which defendant No.2 is a bona fide purchaser for a valuable consideration and rightly so, the plaintiff has been compensated with double the amount as defendant No.2 vendee was not aware that the vendor had entered into an another agreement to sell dated 28.5.1999. There is no force in the submission of Mr. Nandan Jindal, learned counsel for the appellant in RSA No. 4473 of 2012, with regard to purchase of stamp paper, from a different place, inasmuch as no evidence has been lead to belie the agreement to sell. Agreement to sell envisages receipt of earnest money of ₹1.5 lacs, rightly so the court below has not granted discretionary relief under Section 20 of the Specific Relief Act, 1963. The appellant failed to discharge onus viz-a-viz non-receipt of earnest money, courts below in these circumstances directed to pay double the amount, taking into consideration the fact

that the property in dispute is commercial in nature. There is house on the first floor of the property whereas the agreement to sell dated 28.5.1999 did not envisage the correct description.

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. There is no illegality or perversity in the aforementioned judgments and decrees of the courts below.

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

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

(AMIT RAWAL)
JUDGE

March 11 , 2016
archana