

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

Regular Second Appeal No.5107 of 2012 (O&M)

Date of Decision: May 03, 2016.

Sat Pal Saini

.....APPELLANT(s).

VERSUS

Sitara Begum and another

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Krishan Singh, Advocate
for the appellant (s).

SURINDER GUPTA, J.

CM-14228-C-2012

Heard. There is delay of 95 days in re-filing the appeal.

2. Learned counsel for the appellant submits that the appeal was filed on 14.05.2012 and objections were raised by the registry on 13.06.2012. The paper book, taken by his clerk from the registry for removing objections, inadvertently got mixed with decided cases and could not be traced. The same was traced out on 30.10.2012 and appeal was refiled on 31.10.2012, resulting in delay of 95 days in re-filing, which was neither intentional nor wilful. The application is supported by affidavit.

3. In view of submission of learned counsel for the appellant, the application is allowed and delay of 95 days in re-filing the appeal is, hereby, condoned.

RSA-5107-2012

4. Heard.

5. This is appeal against the concurrent judgments of the Courts below, whereby in the suit filed by plaintiff seeking specific performance of agreement to sell dated 20.11.2011, he was allowed the decree for recovery of double the earnest money with interest @ 6% per annum from the date of decree, till realisation of decretal amount.

6. Sitara Begum, respondent-defendant No.1 entered into agreement to sell 1/2 share of the disputed property owned by her minor son Aseem. The first Appellate court while affirming the judgment of learned Additional Civil Judge (Senior Division), Yamuna Nagar at Jagadhari has observed that the agreement was not legal and valid as Sitara Begum was not competent to enter into agreement to alienate the property owned by her minor son. Admittedly, no permission of the Court was obtained by Sitara Begum to alienate the share of minor in the suit property.

7. Learned counsel for the appellant has argued that Sitara Begum played a fraud with the appellant-plaintiff by entering into agreement to sell the property of minor and by not obtaining required permission of the Court despite term in this regard in the agreement.

8. So far as the question of fraud is concerned, the argument of learned counsel for the appellant-plaintiff that Sitara Begum had played a fraud with the plaintiff, is not tenable, as at the time of entering into agreement to sell, plaintiff was aware that he is agreeing to purchase the share of minor which his mother was not competent to alienate. This is why a term was incorporated in the agreement that she will obtain permission of

the Court to sell the share of minor. There is only breach of term of agreement for which the Courts below have already allowed the damages by granting decree of double the amount of earnest money with interest.

9. On perusal of the record and judgments of the Courts below, I find no legal or factual infirmity therein calling for any interference.

10. No substantial question of law requiring determination arises in this appeal, which has no merits.

11. Dismissed.

May 03, 2016.
Sachin M.

(SURINDER GUPTA)
JUDGE