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

Date of decision : 22.07.2016

1.

RSA-591-2012 (O&M)

Gurbachan Kaur

... Appellant(s)

Versus

Paramjit Singh and others

... Respondent(s)

2.

RSA-627-2012 (O&M)

Satnam Singh

... Appellant(s)

Versus

Paramjit Singh and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

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

Mr. Premjit Kalia, Advocate
for respondent No.1.

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-1778-C-2012 IN RSA-627-2012

For the reasons stated in the application which is duly
supported by an affidavit, the delay of 210 days in re-filing the appeal is

condoned.

CM stands disposed of.

CM-1648-C-2012 IN RSA-591-2012

For the reasons stated in the application which is duly supported by an affidavit, the delay of 21 days in filing the appeal is condoned.

CM stands disposed of.

MAIN CASES

This order of mine shall dispose of the appeal bearing **RSA No.591 of 2012** titled as **“Gurbachan Kaur V/s Paramjit Singh and others”** arising out of a decision of **Civil Suit No.626 of 2008** titled as **“Balwinder Singh (Deceased through LRs) V/s Gurbachan Kaur w/o Surjan Singh”** wherein the Courts below have decreed the suit seeking specific performance of the agreement to sell dated 08.10.2001 in respect of a land measuring 13 kanals 14 marals and the other appeal bearing **RSA No.627 of 2012** titled as **“Satnam Singh V/s Paramjit Singh and others”**, arising out of a decision of the **Civil Suit No.533 of 2008** titled as **“Balwinder Singh (deceased through LRs) V/s Satnam Singh”** whereby the suit seeking specific performance of the agreement to sell dated 03.12.2001 in respect of a land measuring 5 kanals 14 marals has been ordered to be decreed.

Mr. Vikas Singh, learned counsel appearing on behalf of the appellant(s)-defendant(s) in both the appeals submits that the appellant(s)-defendant(s) in the written statement categorically denied the execution of

the agreement to sell and stated that it was a loan transaction of ₹ 50,000/-, which had been repaid, but the blank stamp papers have been used for agreement to sell. The agreement to sell was dated 08.10.2001 and the alleged target date was 08.10.2002. The respondent No.1-plaintiff is stated to have paid earnest money of ₹ 2,32,000/- against the total sale consideration of ₹ 3,60,000/-, whereas in the second suit, against the total sale consideration of ₹ 1,42,500/-, a sum of ₹ 1,00,000/- had been paid as earnest money and the extended target date was 20.04.2002.

He submits that the witness of respondent No.1-plaintiff did not depose in terms of the averments made in the plaint. One of the witness, namely, Swaran Singh, Lambardar, in cross-examination spilled the beans. The readiness and willingness has not been proved. The other witness, namely, Rajwinder Kaur-Scribe stated that a sum of ₹ 1,82,000/- was paid, whereas, third witness gave a different version. The alleged mortgage deed in a Civil Suit bearing No.626 of 2008 was also emphatically denied, therefore, the disbursement of the alleged amount of ₹ 50,000/- was neither here and there. All these facts have not been noticed by both the Courts below. In respect of the second appeal arising out of Civil Suit No.533 of 2008, it has been stated that there was no plea of mortgage deed, but the stand in the written statement was also of obtaining a loan of ₹ 40,000/-. The witnesses have also failed to prove the case of the respondent(s)-plaintiff(s), much less, readiness and willingness, thus, urges this Court for formulation of the substantial questions of law as drawn in the memorandum of appeal.

Mr. Premjit Kalia, learned counsel appearing on behalf of

respondent No.1-plaintiff submits that had the blank stamp papers been used, there would have been a relevance of adjustment of line. The agreement to sell is running into four pages and the thumb impressions at the relevant portion of the page were required to be appended, thus, there is no element of fraud having been played. Had it been so, nothing prevented the appellant(s)-defendant(s) to make the complaint to the police. The thumb impressions have gone un-rebutted, even, the witnesses have also deposed in view of the averments in the plaint. The readiness and willingness has been proved to the hilt, rightly so, the discretion has been exercised. In the first suit, the registered mortgage deed dated 19.01.2000 has also been denied, thus, urges this Court for affirming the judgment and decree under challenge and prays for dismissal of the appeal as no substantial question of law arises for determination.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is no force and substance in the submissions of Mr. Vikas Singh, for, the respondent No.1-plaintiff have positively, by leading direct and cogent evidence, proved the execution of the agreement to sell through the deposition of scribe and the attesting witnesses. The appellant(s)-defendant(s) had been audacious to deny the registered mortgage deed in Civil Suit bearing No.626 of 2008.

I have gone through the stamp papers used for the execution of the agreement to sell and found that they are bearing their thumb impressions at the relevant portions with no adjustment of line. Had it been so, perhaps only, one occasion would have been there. It is a common

practice by the vendor to volt-face, where the vendee is forced to depose to the Court seeking vindication of the grievances. In most of the cases, the stand of the loan is taken, but the same is never proved and these cases are of such kind, where the disbursement of the alleged loan amount of ₹ 50,000/- in the first suit bearing No.626 of 2008 and ₹ 40,000/- in second suit bearing No.533 of 2008, has not been proved through independent or corroborative evidence. On the contrary, the respondent No.1-plaintiff has proved the readiness and willingness as in both case, the suit was filed after the expiry of the target date and rightly so, the discretion has been exercised by both the Courts below.

For the foregoing reasons, I do not intend to the judgment and decree rendered by both the Courts below which are based upon the preponderance of oral and documentary evidence, much less, no substantial question of law arises for determination.

With the aforesaid observations, the appeals are dismissed.

22.07.2016
yogesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned	✓ Yes/ No
Whether Reportable	✓ Yes/ No