

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

106

Regular Second Appeal No.2149 of 2016 (O&M)
Date of Decision: May 09, 2016

Smt. Neelam and others

...Appellants

Versus

Dharambir

...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASI

Present: Mr. Amit Kumar Goyal, Advocate
for the applicants-appellants.

AUGUSTINE GEORGE MASI, J. (ORAL)

CM No.5670-C of 2016

Prayer in this application is for condonation of delay of 20 days
in filing the appeal.

For the reasons mentioned in the application which is supported
by the affidavit of applicant-appellant No.1, the present application is
allowed.

Delay of 20 days in filing the appeal stands condoned.

**CM Nos.5671-72-C of 2016 and
RSA No.2149 of 2016**

Prayer in CM No.5671-C of 2016 is for exemption to the
applicants-appellants from filing the Court fee of ₹22,850/-.

It has been asserted that the applicants-appellants did not have
sufficient funds to deposit the Court fee and, therefore, they are unable to
file the Court fee and a prayer for exemption has been made. No details
whatsoever have been given as to what is their source of income, what are
the properties held by them and the income therefrom and whether the
properties as owned by them is exempted from attachment as provided
under Section 60 of the Code of Civil Procedure or not. The application is

without merit and the same, therefore, deserves dismissal.

The case has also been heard on merits and the only plea which has been pressed by the counsel for the appellants, whereby the impugned judgment and decree dated 03.10.2015 passed by the Additional District Judge, Panipat, has been assailed, is that the respondent-plaintiff has failed to prove the due execution of the agreement to sell dated 12.06.2006 Exhibit P-1. The ground for assailing the said finding is that the sole attesting witness, who has appeared for proving the due execution of the agreement to sell namely Rajan PW-3, in his cross-examination has stated that he did not know the respondent-plaintiff prior to the date of execution of the agreement to sell and he came to know him after the filing of the suit. That apart, he asserts that in the cross-examination, he has also admitted that there was litigation pending between Raj Singh, the vendor and Indro, who belongs to the family of Rajan, the attesting witness and, therefore, there was a personal grudge which was the reason why he had appeared before the Court and deposed against the appellants-defendants.

I have considered this submission, as has been made by the counsel for the appellants but do not find any force therein, especially when it is not the requirement of the statute that the parties to the agreement to sell should be known to the attesting witnesses prior to the execution of the agreement to sell. It is generally known and accepted norm that one of the attesting witnesses is known to the buyer and the other known to the purchaser. The same position appears to be in the present case, where the attesting witness, who had been produced i.e. Rajan PW-3, was known to Raj Singh, the vendor and he had deposed supporting the case of the

appellants-defendants *in toto* explaining as to how the agreement to sell was duly executed and signed and even the sequence of affixing signatures on the agreement to sell of the parties has been mentioned therein. Not only this, the Stamp Vendor has also appeared and duly proved the purchase of stamp papers by Raj Singh vide Serial No.4859 dated 12.06.2006, the date of execution of the agreement to sell. Respondent-plaintiff-Dharambir has also appeared and deposed with regard to the due execution of the agreement to sell and thereafter he has approached the office of the Executive Magistrate, Samalkha, on 29.12.2006 with balance sale consideration of ₹18 lacs for execution of the sale deed as per the date fixed. That apart, two legal notices have been sent to the appellants-defendants dated 31.01.2007 and 17.02.2007 which have been admitted to have been received by them but no reply thereto has been filed. The suit was instituted on 16.05.2007. The plea which has been taken was that the agreement to sell was a result of fraud and, therefore, could not be acted upon but no evidence has been produced on record which would justify such a plea having been taken. It may be added here that a plea was taken that the land, which is the subject matter of the suit, was an ancestral property and thus, could not have been sold by Raj Singh but that aspect also has not been proved before the Courts below.

No other point has been argued by the counsel for the appellants.

The findings as recorded by the learned Lower Appellate Court being in accordance with the pleadings and the evidence brought on record, do not call for any interference by this Court as there is no misreading or

non-consideration of the material on record.

No substantial question of law is involved in the present appeal.

There is no illegality in the judgment and decree impugned as passed by the Additional District Judge, Panipat, dated 03.10.2015 which would call for interference in the present appeal.

In view of the above, the application for exemption from filing the Court fee is dismissed. The same may be deposited by the applicants-appellants within a period of four weeks from today, failing which the same may be recovered as an arrears of land revenue.

The appeal being devoid of merit also stands dismissed.

In the light of the dismissal of the appeal, the application for stay i.e. CM No.5672-C of 2016, stands disposed of as infructuous.

May 09, 2016
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE