

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

RSA No.2439 of 2015 (O&M)

Date of decision:14.03.2016

Pushpa Rani

... Appellant

Vs.

Vinod Kumar

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

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

Present:- Mr. J.S.Bhandohal, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

C.M.No.6382-C of 2015

For the reasons stated in the application, duly supported by an affidavit, delay of 249 days in re-filing the appeal is condoned.

C.M. stands disposed of.

C.M.No.6383-C of 2015

Deficiency of Court fee, has been made good.

C.M. stands disposed of.

RSA No.2439 of 2015 (O&M)

Appellant-defendant is aggrieved of the judgment and decree rendered by the Lower Appellate Court, whereby, suit seeking specific performance of the agreement to sell dated 17.09.2005, has been decreed, in essence, judgment and decree of the trial Court

dismissing the suit, has been set aside.

Mr. J.S.Bhandohal, learned counsel appearing on behalf of the appellant-defendant submits that the trial Court, on the basis of the oral and documentary evidence, declined the discretionary relief on the ground that agreement to sell was not accompanied by 'General Power of Attorney' allegedly executed in favour of Sat Parkash. However, the Lower Appellate Court reversed the findings by giving its findings in sub paras of para No.9 which are totally alien to the principles of natural justice, much less, pleadings of the parties to the lis. Prior to the agreement to sell, appellant-defendant had instituted a suit against her sons not to forcibly dispossess or interfere. The matter was compromised, accordingly, the suit was withdrawn. Execution of the agreement to sell by 'Power of Attorney' is suspicious, for, consideration allegedly received by Sat Parkash, has not been proved. Even otherwise, Sat Parkash was not given authority to alienate and enter into agreement to sell and thus, urges this Court to formulate the substantial questions of law, as culled out in the grounds of appeal.

I have heard learned counsel for the appellant-defendant and appraised the judgments and decrees of the Courts below and of the view that appeal sans merit, for the following reasons:-

The appellant-defendant has not stepped into witness box whereas, his son, Ashwani Kumar, against whom injunction was sought has appeared and other son is witness to the agreement. No

criminal complaint or FIR has been lodged against attorney, who is none-else but husband. It has not been proved on record whether husband and wife are living separately or together. All the acts are done by the family members. Nothing prevented the defendant to step into witness box to dispute the same. Even if she is old lady, assistance of Local Commissioner could have taken.

In view of the aforementioned facts, I am of the view that finding rendered by the Lower Appellate Court being the last Court of facts and law, is perfectly legal and justified, wherein, the suit for specific performance, aforementioned, for a total sale consideration of ₹12,60,000/- against the receipt of earnest money of ₹10,00,000/-, has been decreed as the target date for execution and registration of the sale deed was 21.11.2005, whereas, suit was filed on 03.02.2006. Ingredients of Section 16(c) of the Specific Relief Act have been proved. No ground is made out for interference in the findings rendered by the Lower Appellate Court, much less, no substantial question of law arises for adjudication of the present appeal.

Accordingly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

March 14, 2016
savita