

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

**RSA No.4267 of 2016 (O&M)
Date of Decision.14.09.2016**

Vaikunth Raj and others

.....Appellants

Vs.

Smt. Raj Mohani Sharma

.....Respondent

Present: Mr. Munish Puri, Advocate
for the appellants.

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AMIT RAWAL J. (ORAL)

C.M. No.11003-C of 2016

For the reasons stated in the application, delay of 8 days in
refiling the appeal is condoned.

Application is allowed.

C.M. No.11004-C of 2016

For the reasons stated in the application, permission for making
good the deficiency of Court fee is granted.

Application is allowed.

RSA No.4267 of 2016

The appellant-defendant is aggrieved of the concurrent finding of
fact whereby the suit for possession in respect of the suit property has been
decreed.

Mr. Munish Puri, learned counsel appearing for the appellant-
defendant submits that the alleged sale deed dated 13.09.1999 set up by the
plaintiff is of vacant plot. In fact , the defendant is in possession of the plot
much prior thereto and in this regard the telephone connection and other
receipts have been proved on record. Even construction had been raised by
him. In fact, the plaintiff had played a fraud upon the defendant in getting the

sale deed registered in his own name. In fact the entire amount of

consideration was passed on at the instance of the appellant-defendant. It was a benami transaction. The appellant-defendant was only a money lender, thus, the assertion in the plaint that the possession was given in the year 2004 is neither here nor there. All these aspects have gone unnoticed before the Courts below and therefore, there is illegality and perversity in the judgments and decrees passed by the Courts below.

I have heard learned counsel for the appellant and appraised the paper book. In order to prove the plea of benami that is permissible in law in view of the law laid down by the Supreme Court in **R. Rajagopal Reddy (d) by LRs and others Vs. Padmini Chandrasekharan (d) by LRs AIR 1996 SC 238** and subsequent thereto, the appellant-defendant had to prove on record the source of entire construction or purchase of the plot. Having failed to do so, the plea/onus of money lending/breach of trust has not been discharged. As regards the sale deed being of a plot and building constructed thereon is in existence prior thereto, the appellant-defendant has failed to prove on record receipts of having raised the construction by him. Even otherwise, title of the respondent-plaintiff has not been challenged. In my view, the status of the appellant-defendant is not more than of a trespasser and rightly so, the possession has been sought.

I do not find any illegality and perversity in the judgments and decrees passed by the Courts below as the same are based upon correct appreciation of facts and law, much less, no ground for interference is made out. The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

September 14, 2016

Pankaj*

Whether reasoned/speaking Yes

Whether reportable No