

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

RSA No.5360 of 2016 (O&M)

Date of Decision.07.10.2016

Raj Singh

.....Appellant

Vs

Jai Kishan

.....Respondent

Present: Mr. Anil Kumar Malik, Advocate
for the appellant.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J. (ORAL)

The appellant-defendant is aggrieved of the concurrent finding of fact whereby the suit for recovery of ₹80,000/- along with interest @2% from the date of pro note till institution of the suit and @8% from the date of institution of suit till realization, has been decreed.

Mr. Anil Kumar Malik, learned counsel appearing for the appellant submits that he did not execute the pro note and receipt. Both were owners and the defendant could not make the payment of his share, therefore, pro note was executed. Later on, plot of 150 sq. yards was sold to Joginder Singh resident of village Ugra Kheri by both parties for a sum of ₹1,65,000/-. The entire payment was received by the plaintiff. Rather the defendant was entitled to recover sum of ₹65,000/- as the plot sold was of 114 sq. yards. All these facts have not been noticed by the Courts below.

I have heard learned counsel for the appellant and appraised the paper book. There is categoric admission of the pro note and receipt. In case, the aforementioned assertion/submissions are to be believed, no documentary evidence qua sale of the land for valuable consideration of

the evidence and admission of the pro note and receipt, the Courts below had no other option but to decree the suit. The concurrent findings of fact are based upon the documentary and oral evidence and the defendant had failed to discharge the onus.

There is delay of 1170 days in filing the second appeal. No explanation has come forth for not filing the appeal within time. The reason given is that he is an illiterate, honest, simple villager having faith in God and does not know the technicalities of law. It is not a case where the defendant was ex parte. He contested the case. He was aware of the judgments and decrees of the Courts below. The explanation given for having acquired the knowledge is that he came to know about the same when the bailiff came to affix the auction notice on the house. Such explanation is inexplicable, much less, unreasonable.

For the foregoing reasons, I do not intend to differ with the findings rendered by the Courts below as the same are based upon correct appreciation of oral as well documentary evidence, much less, no substantial question of law arises for consideration.

The second appeal is dismissed on limitation as well as on merits.

(AMIT RAWAL)
JUDGE

October 07, 2016

Pankaj*

Whether reasoned/speaking Yes/No

Whether reportable Yes/No