

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

109

Regular Second Appeal No.4487 of 2015 (O&M)
Date of Decision: February 01, 2016

Hardam Singh

...Appellant

Versus

Chaman and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Harmandeep Singh Saini, Advocate
for the applicant-appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM No.10775-C of 2015

Prayer in this application is for condonation of delay of 128 days in re-filing the appeal.

The reason assigned for the delay in re-filing the appeal is that after the filing of the appeal, certain objections were raised by the Registry. The Clerk of the counsel, who had collected the paper book, had inadvertently placed the same in some other brief. The same was traced out with difficulty and after that objections were removed and the case re-filed which has resulted in the delay of 128 days in re-filing the appeal. The application is supported by the affidavit of the Clerk of the counsel.

For the reasons mentioned above, the present application is allowed.

Delay of 128 days in re-filing the appeal stands condoned.

CM No.10776-C of 2015

Prayer in this application is for making good the deficiency in Court fee in filing the appeal which was inadvertently not affixed initially

when the case was filed. The said deficiency has now been made good and a prayer has been made for making good the same and permitting it to be taken on record.

The deficient Court fee is permitted to be made good and the same is taken on record.

CM No.10777-C of 2015

Prayer in this application is for condonation of delay of 62 days in filing the appeal.

For the reasons mentioned in the application which is duly supported by the affidavit of the applicant-appellant, the present application is allowed.

Delay of 62 days in filing the appeal stands condoned.

RSA No.4487 of 2015

Challenge in this appeal is to the judgment and decree dated 07.08.2012 passed by the Additional Civil Judge (Senior Division), Nakodar, whereby the suit for possession by way of specific performance of the agreement to sell dated 01.06.2009 by which the appellant-defendant No.1 agreed to sell land measuring 8 kanals 15 marlas along with fixtures as detailed in the head note, has been decreed, although an alternative prayer was also made and the appeal preferred by the appellant-defendant No.1 has been dismissed by the Additional District Judge, Jalandhar, on 30.08.2014.

It is the contention of learned counsel for the appellant that the appellant had taken a loan of ₹1,00,000/- from respondent No.1-plaintiff for which certain blank papers were got signed by him. Apart from this transaction, there has earlier also been loan transactions between the parties.

The said documents were signed in a fiduciary capacity believing respondent No.1 that he would not misuse the same but he had proceeded to get an agreement to sell dated 01.06.2009 Exhibit P-2 prepared qua the land as detailed in the head note of the suit. He contends that the total land of the appellant, who is a farmer, has in this process been made the subject of the sale deed. He contends that the said agreement to sell was never intended to be entered into by the appellant with respondent No.1-plaintiff and it is an outcome of fraud having been played upon the appellant. Assertion has also been made that the said agreement to sell cannot be said to have been executed by appellant-defendant No.1 as the same is dated 01.06.2009, whereas on 18.12.2009, he had mortgaged the suit land in favour of Punjab National Bank, Mehatpur Adda, Nakodar-respondent-defendant No.2 against a loan of ₹6,00,000/-. He contends that as per the assertion of the plaintiff, appellant had earlier also mortgaged a part of the suit land with Oriental Bank of Commerce, Nurmahal against a loan of ₹3,50,000/- and there was no reason why the appellant would not have mortgaged the remaining land with the said bank, had he intended to take some more loan. He, thus, contends that the judgments and decree passed by the Courts below cannot sustain. That apart, he asserts in the given facts and circumstances of the case, it being a case of extreme hardship, the alternative prayer as was made in the suit i.e. for recovery of ₹8,00,000/- by way of refund of the earnest money to the tune of ₹3,50,000/- coupled with damages to the tune of ₹4,50,000/- could have been decreed by the Courts below by exercising its discretion but the same has not been done by the Courts below. He, thus, contends that the judgments and decree passed by

the Court below cannot sustain and deserve to be set aside.

I have considered the submissions made by learned counsel for the appellant and with his able assistance, have gone through the impugned judgments but cannot accept his contentions. The thumb impressions on the agreement to sell dated 01.06.2009 Exhibit P-2 are not disputed by the appellant. The due execution of the agreement to sell dated 01.06.2009 has been proved by the respondent No.1-plaintiff by producing both the attesting witnesses and the scribe. The plea of the appellant that the agreement is a forged and fabricated document on the basis of a fraud having been committed on the appellant by respondent No.1-plaintiff, has not been established, rather there is no evidence to that effect. The sequences of events, as has been recorded by the learned Lower Appellate Court in para 33 of the judgment speaks for itself after the due consideration of the evidence in the context of the pleadings of the parties. The same reads as follows:-

“33. A perusal of copy of jamabandi Ex.P1 reveals that Hardam Singh defendant no.1 is recorded a co-sharer in the land mentioned therein and there is note with red ink regarding entry of mutation of the land mortgaged by him with Punjab National Bank Branch Mehatpur against a loan of Rs. 6 lac . It has come in evidence on record that at the time of execution of the agreement to sell Ex.P2 , the suit land was mortgaged with Oriental Bank of Commerce Nurmahal against a loan of Rs.3,50,000/- by defendant no.1, but land was got redeemed after the execution of the said agreement and thereafter on 18.12.2009, he again mortgaged the land in suit in favour of Punjab National Bank Adda Mehatpur Nakodar (defendant No.2) against a loan of Rs.6 lac without disclosing the execution of the agreement to sell dated 1.6.2009 to the said bank and loan amount alongwith interest

is still due against him. However, the counsel for the plaintiff had suffered a statement on 3.8.2012 before the learned trial Court that plaintiff is ready and undertake to deposit bank loan with interest raised by defendant no.1 from defendant no.2 with protest to recover the additional amount which becomes excess to the balance sale price to be paid to the defendant no.1 in case suit-A of the plaintiff is decreed by the Court. That being so, the above encumbrance on the suit land is no ground to decline the relief of specific performance sought by the plaintiff. The plaintiff by leading evidence has duly proved his readiness and willingness to perform his part of the agreement to sell and defendant has failed to rebut the same. The learned trial Court has rightly observed that plaintiff is entitled to primary relief of possession by specific performance of the agreement to sell and no case of any exceptional hardship having been made out”.

The findings as recorded by the Courts below, thus, cannot be faulted with.

The plea as taken by the counsel for the appellant that the alternative relief of suit for recovery should have been accepted and granted to respondent No.1-plaintiff but the said aspect cannot be accepted in the light of the fact that respondent No.1-plaintiff has been able to prove the due execution of the agreement to sell and has also been able to prove his readiness and willingness to perform his part of the agreement to sell. The Courts have rightly proceeded to decree the suit filed by respondent No.1-plaintiff.

Both the Courts below have returned concurrent findings after properly appreciating the pleadings and the evidence brought on record by both the parties and the same cannot be interfered with as there is no perversity or illegality in the same.

No substantial question of law is involved in the present appeal. Therefore, finding no merit in the appeal, the same stands dismissed.

In the light of the dismissal of the appeal, the application for stay i.e. CM No.10778-C of 2015, stands disposed of as infructuous.

February 01, 2016

Puneet

**(AUGUSTINE GEORGE MASIH)
JUDGE**