

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

**RSA No. 2140 of 2014(O&M)
Date of decision: 05.05.2016**

Roop Ram

...Appellant(s)

Versus

Smt. Raj Kaur @ Rajwant Kaur

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Maharaj Kumar, Advocate
for the appellant.

JITENDRA CHAUHAN, J.
CM No. 5216-C-2014

This is an application for condonation of delay on 12 days in re-filing the appeal. It is averred that the appeal was filed on 09.01.2014 which was checked on 01.02.2014 and later on was collected from the registry in the second week of February 2014. The steps were taken to remove the objections raised by the Registry and appellant was summoned to sign the affidavits in support, as a result, the appeal was be refilled with the delay of 12 days.

Keeping in view the averments made in the application and the accompanying affidavit, and the fact that the objections were minor in nature, there appears to be sufficient cause for allowing the same. The delay of 12 days in refilling the present appeal is hereby condoned subject to all just exceptions.

CM No. 5217-C-2014

This is an application for condonation of delay of 12 days

in filing the appeal.

For the reasons mentioned in the application which is duly accompanied by an affidavit, the delay of 12 days in filing the appeal is condoned and the application is allowed.

Main Case

Having lost before both the Courts below, the plaintiff has preferred the instant regular second appeal against the judgment and decree dated 24.04.2012, passed by Additional Civil Judge (Senior Division), Kurukshetra (for short 'the trial Court') and; the judgment and decree dated: 30.09.2013, passed by District Judge, Kurukshetra (for short 'the Lower Appellate Court').

In short, the plaintiff filed suit for permanent injunction restraining the defendant from dispossessing him from the suit property illegally and forcibly. It was pleaded by the plaintiff that he owned a plot measuring 111.11 sq. yards situated at village Bir Pipli, Tehsil Thanesar, District Kurukshetra. The plaintiff sold this plot to defendant for a sale consideration of Rs. 5 lacs vide sale deed No. 1772 dated 04.05.2006. The defendant paid an amount of Rs. 2,50,000/- in cash to the plaintiff on the date of execution and registration of the sale deed and agreed to make payment of Rs. 2,10,000/- to Punjab National Bank, Pipli against outstanding loan amount of the plaintiff. The defendant also promised to pay the remaining amount of Rs. 40,000/- on the date of the receipt of original sale deed kept in the loan account by the plaintiff. It was also agreed that the possession of the plot would

be retained by the plaintiff till final settlement of the accounts. The defendant contravened the terms of the agreement and did not make any payment towards the loan account. The plaintiff had to make the payment to the bank. The plaintiff asked the defendant to pay Rs. 3,00,400/- including outstanding loan plus interest plus Rs. 40,000/- and take the possession of the land but the defendant did not pay any heed to the request of the plaintiff. The defendant tried to dispossess the plaintiff. Hence the suit for permanent injunction.

Upon notice, the defendant appeared and filed written statement contesting the suit of the plaintiff. It was pleaded by the defendant that the plaintiff sold the property to defendant and admitted in the sale deed that the property was free from all encumbrances and there was no loan etc. on the suit property. A sum of Rs. 1,23,000/- was paid by the plaintiff as full and final payment and the defendant was put in possession of the suit property. There was no question of dispossession of the plaintiff as the suit property was in possession of the defendant.

After appraisal of the evidence, the learned trial court, vide judgment and decree dated 24.4.2012, dismissed the suit holding that the primary and the best evidence i.e. the sale deed in question was not produced on record.

Feeling aggrieved, the plaintiff filed appeal before the District Judge, Kurukshetra which also met with the same fate vide judgment and decree dated 30.09.2013. Hence the present regular

second appeal at the behest of the plaintiff.

On behalf of the appellant, it is contended that both the Courts below have committed error in dismissing the suit of the plaintiff. It is further contended that the Courts below have ignored the fact that apart from the sale deed dated 04.05.2006, there was an oral agreement between the parties whereby it was stipulated that the outstanding loan amount would be cleared by the defendant.

I have heard learned counsel for the appellant and have gone through the case file.

There is a concurrent finding of fact recorded by both the Courts below that as per the sale deed No. 1772 dated 04.05.2006, the sale consideration of Rs.1,23,000/- was paid to the plaintiff and the possession of the land in question was handed over to the defendant. There was no mention of any loan amount. Rather perusal of the sale deed is suggestive of the fact that the land in question was free from all encumbrances. That being so, the oral agreement set up by the plaintiff does not carry any weight in the presence of documentary evidence of sale deed dated 04.05.2006. Further, Section 92 of the Indian Evidence Act envisages that when the terms of any contract have been proved according to the provisions of Section 91, no evidence of any oral agreement shall be admitted as between the parties to any such instrument for the purpose of contradicting, varying, adding to, or subtracting from, or its terms. The learned counsel could not demonstrate that his case falls under any of the six proviso attached to

the Section. There is no misreading or mis-interpretation of the evidence. The argument raised by the learned counsel relates to the question of fact only. There is no substantial question of law in the present regular second appeal. Consequently the appeal is dismissed.

(JITENDRA CHAUHAN)
JUDGE

05.05.2016
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