

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

RSA-798 of 2016 (O&M)

Date of decision: 25.02.2016

Krishan Baldev Suri and another

...Appellants

Versus

Gurdip Singh

...Respondent

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Anil Bansal, Advocate
for the appellants.

Mr. Ranjit Sharma, Advocate
for respondent-caveator.

Jitendra Chauhan, J. (Oral)

CM-2186-C-2016

Learned counsel for the appellants contends that Court fee has already been made good. Delay in making up the deficiency in Court fee is condoned. CM stands disposed of.

CM-2187-C-2016

This is an application for condonation of delay of 122 days in refiling the appeal. It is averred that the appeal was filed on 01.09.2015 within limitation but the same was returned with objections. Thereafter, delay was caused as the brief of the case

was mixed up with other cases.

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 122 days in refiling the present appeal is hereby condoned subject to all just exceptions.

Main Case

The plaintiffs/appellants filed suit for possession as owner by way of specific performance of the agreement to sell dated 14.02.2003. The trial Court vide judgment and decree dated 20.02.2014, decreed the suit alternatively to the effect that the plaintiffs are entitled to recover a sum of Rs.37,50,000/- along with proportionate costs and interest @ 8% p.a., from the date of execution of agreement till the filing of the suit and @ 6% p.a., from the date of filing of the suit till its actual realization. Gurdip Singh filed civil appeal No.53 of 2014 against the judgment and decree vide which the suit of the plaintiff was decreed for recovery of Rs.37,50,000/- along with interest. Whereas Krishan Dev Suri and Tarlok Singh Riar also filed Civil Appeal No.55/65 RBT of 2014-15 against the same judgment and decree vide which the specific performance was

declined. Both the appeals were heard and disposed of by a single judgment by the District Judge, who allowed the appeal filed by Gurdip Singh with costs, whereas the appeal filed by Krishan Baldev Suri and Tarlok Singh Riar was dismissed with costs. Consequently, the suit filed by Krishan Baldev Suri and Tarlok Singh Riar for specific performance as well as for alternative relief was dismissed with costs.

2. This regular second appeal has been filed by Krishan Baldev Suri and Tarlok Singh Riar against the judgment and decree dated 30.05.2015, passed by 1st Appellate Court.

3. The brief facts of the case are that the plaintiff filed a suit for specific performance of an agreement to sell dated 14.02.2003 for land measuring 23 kanals and 19 marlas which was required to be sold by the defendant being owner of the said land for a sale consideration of Rs.45 lacs. The plaintiffs/appellants had paid an amount of Rs.5 lacs as earnest money to the respondent/defendant and further agreed to execute the sale deeds in three sets i.e. 14.02.2004, 14.08.2004 and 14.02.2006.

4. It is contended that the plaintiffs/appellants are ready and willing to perform their part of agreement and it is the

defendant who backed out to execute the agreement. The defendant himself had admitted regarding execution of agreement to sell for land measuring 25 kanals and 19 marlas in favour of the appellants. The defendant had sold out 2 kanals of land of the suit in favour of the plaintiffs. The receipt regarding payment of Rs.5 lacs at the time of execution of agreement to sell is also not disputed by the defendant. The defendant had received Rs.37.50 lacs in different installments from the plaintiffs, vide receipt Ex.P2 to Ex.P6. It is further submitted that the plaintiffs were present in the office of Sub Registrar to get the sale deed executed, however, the defendant did not turn up on 14.02.2006.

5. On the other hand, the learned counsel for the caveator controvert all the submissions raised by the learned counsel for the appellants and prays for dismissal of the present appeal.

6. Heard, the learned counsel for the parties.

7. Admittedly, the parties had entered into an agreement to sell dated 14.02.2003 for a total land measuring 25 kanals 19 marlas. Both the parties had agreed to execute the sale deed in three phases i.e on 14.02.2004, 14.08.2004 and 14.02.2006. It is

also not in dispute that the respondent had received Rs.5 lacs as earnest money and he had sold out 2 kanals of land in favour of the plaintiffs. Out of total land, sale deed of 08 kanals of land each was to be executed on 14.02.2004 and 14.08.2004, however, there is nothing on record to suggest that the plaintiffs/appellants made any effort to get the sale deeds executed on the stipulated dates. The readiness and willingness of the plaintiffs have also not been corroborated by way of some document or evidence. Nothing has come on record regarding the presence of the plaintiffs before the Sub Registrar on 14.02.2006 to get the sale deed executed.

6. Further, a bare perusal of Ex.D1, the order dated 14.06.2006 passed by the District Judge, Gurdaspur in an appeal filed by the respondent-Gurdip Singh, reveals that the respondent-Gurdip Singh had made a specific statement on oath that he was ready and willing to execute the sale deed and the appellant Krishan Baldev Suri denied to make statement with regard to readiness to execute the sale deed, which shows that appellants were not ready to execute the sale deed in terms of the agreement to sell. The factum of payment of Rs.37.50 lacs was also not proved on record as the appellants have not produced

the original receipts Ex.P3 to P6 of the payment made. There is no illegality or perversity in the judgment passed by the learned Appellate Court. Hence, no inference is called for.

Dismissed.

25.02.2016

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(JITENDRA CHAUHAN)
JUDGE