

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
RSA No. 3166 of 2014(O&M)
Date of decision : February 5, 2016

Smt. Satya Devi (deceased) through L.Rs

..... Appellants

Versus

Dinesh Bhardwaj

..... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Ajay Ghangas, Advocate
for the appellant.

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

Amit Rawal, J (oral).
CM No.7430-C of 2014

This is an application under Section 5 of the Limitation Act seeking condonation of delay in filing the appeal.

For the reasons stated in the application, which is duly supported by an affidavit, delay of 18 days in filing the appeal is condoned.

The application stands disposed of.

RSA No. 3166 of 2014(O&M)

The appellant-defendant is in Regular Second Appeal against the judgment and decree of the lower appellate whereby the suit at the instance of the respondent-plaintiff seeking specific performance of the agreement to sell dated 27.1.2007 in respect of House No.764 Sector 22 NIT, Faridabad has been decreed and she has been called upon to execute the sale deed.

Learned counsel appearing on behalf of the

appellant submits that the agreement to sell was denied. It was stated that it was a loan transaction of ₹2 lacs which was obtained by the husband of the appellant-defendant. The agreement to sell has been signed by the appellant-Satya Devi-wife of Gian Chand whereas on demise of husband of the defendant, all the family members became co-sharers. The receipt dated 27.1.2007 bearing signatures of the sons of the defendant could not be considered as an agreement to sell as it is not attested by any of the witnesses. The agreement to sell, aforementioned, cannot be said to be in respect of selling of a house, instead it was a loan transaction and interest was paid by cheque or sometimes by cash. The receipt of cheque has been admitted by the respondent-plaintiff. The trial court on the basis of the aforementioned evidence, dismissed the suit, however, the lower appellate court being last court of fact and law, erroneously and perversely reversed the finding, thus there is illegality and perversity in the same and substantial question of law arise for determination by this Court.

He further submits that contents of the legal notice dated 15.1.2008 were emphatically denied by filing reply dated 18.1.2008 Ex.P-7, thus prays that the lower appellate court should not have exercised the discretion under Section 20 of the Specific Relief Act, 1963 and at the best, have ordered for refund of the earnest money.

I have heard learned counsel for the appellant and appraised the paper book.

The receipt dated 27.1.2007 is signed by the sons

of the deceased wife of late Gian Chand. The contents of receipt have not been disputed by the appellant, which ex facie reveals that they have consciously agreed to sell the house in question, much less possession was handed over. The attesting witnesses of the agreement to sell have proved the execution of the agreement to sell. The defendants did not take any criminal action by filing a police complaint. Had there been any truth in the assertions, the defendants would not have been silent. It is normal practice the vendor take up a plea by rendering it to be a loan transaction. The payment of the principal amount and interest has not been brought on record, much less proved in accordance with law. In my view, the suit was filed on 28.4.2008, thus the readiness and willingness cannot be said to be wanting. I am of the view that the lower appellate court has rightly exercised the discretion under Section 20 of the Specific Relief Act, 1963 in decreeing the suit.

On going through the file, it is found that the court fee is required to be paid for entertaining the appeal, although an application has been moved.

Learned counsel for the appellant seeks two weeks' time to pay the court fee. This order shall be operative after two weeks. In case, no court fee is paid the registry is directed to list the appeal for taking appropriate action thereafter.

I do not intend to differ with the finding rendered by the lower appellate court which is based on appreciation of oral and documentary evidence. I do not find any illegality or perversity in the aforementioned judgment and decree of the lower appellate court.

No substantial question of law arise for determination by this Court.

In view of what has been observed above, the appeal is devoid of merits, accordingly, the same is dismissed.

(AMIT RAWAL)
JUDGE

February 5 , 2016
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