

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 3742 of 2014(O&M)
Date of decision : February 3, 2016

Laxman Singh

..... Appellant

Versus

Pawan Kumar and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Jai Vir Yadav , 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. 8651-C of 2014

This is an application under Section 151 CPC seeking condonation of delay in refiling the appeal.

For the reasons stated in the application, which is duly supported by an affidavit, delay of 61 days in refiling the appeal is condoned.

The application stands disposed of.

CM No. 8650-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 1 day in filing the appeal is condoned.

The application stands disposed of.

RSA No. 3742 of 2014

The appellant-defendant No.3-subsequent vendor is aggrieved of the concurrent finding of fact whereby the suit at the instance of the plaintiff seeking specific performance of the agreement to sell dated 15.1.2007 in respect of land measuring 3 Kanals and 17 Marlas has been decreed and defendant No.1 has been directed to execute and register the sale deed on receipt of entire sale consideration.

Learned counsel appearing on behalf of the appellant submits that the agreement to sell dated 15.1.2007 was executed by an attorney-Jagdish, who is none else but brother of the vendor and when defendant came to know about it he got the power of attorney cancelled on 22.1.2007 and vendor had agreed to sell the land to the appellant-defendant and thereafter the sale deed was executed on 5.3.2007 prior to filing of the suit which was filed on 30.3.2007 and thus, the status of the appellant-defendant No.3 is a bona fide purchaser as per provisions of Section 41 of the Transfer of Property Act, 1882. All the aforementioned facts have not been noticed by the courts below, thus there is illegality and perversity in the impugned order and a substantial question of law arise for determination by this Court.

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

I am of the view that the appeal deserves to be dismissed for the following reasons.

The vendor-defendant No.1, though admitted the

agreement to sell by taking the plea that respondent-plaintiff was not ready and willing to perform his part of the agreement. The suit aforementioned was preceded by a legal notice dated 5.2.2007. Had there been any assertion taken for the first time in the written statement, nothing prevented the defendant to reply the legal notice. The appellant-defendant No.3 cannot be said to be a bona fide purchaser for the reason that agreement to sell dated 24.1.2007 is during the subsistence of the agreement to sell dated 15.1.2007 as the power of attorney entered into in favour of Jagdish has been cancelled and not the agreement. It is in these circumstances, the respondents filed the suit. Both the courts below have rightly decreed the suit.

Keeping in view the aforementioned facts, I do not intend to differ with the finding rendered by both the courts below which is based on appreciation of oral and documentary evidence. I do not find any illegality or perversity in the aforementioned judgments and decrees of the courts below. The findings rendered by both the courts below are affirmed.

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 3, 2016
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