

RSA No.3893 of 2014 (O&M)

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

RSA No.3893 of 2014 (O&M)

Date of Decision: February 08, 2016

Shakuntla & another

...Appellants

Versus

Ashok Kumar & another

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASI

Present: Mr. Nonish Kumar, Advocate
for the appellants.

AUGUSTINE GEORGE MASI, J. (Oral):

CM No.9000-C-2014

Prayer in this application is for condonation of delay of 25 days in re-filing of the appeal.

The reason assigned for the delay is that under a *bona fide* belief that the appeal was to be filed without affixing the Court fee as one part of decree i.e. for recovery of ₹40,000/- was not challenged in this appeal, an objection was raised by the Registry and accordingly, the remaining Court fee was called from the applicant-appellants who supplied the same and on affixing the said Court fee, the appeal was re-filed which has resulted in delay of 25 days in re-filing the appeal. The application is supported by the affidavit of applicant-appellant No.2.

For the reasons mentioned in the application, the same is

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allowed. Delay of 25 days in re-filing the appeal stands condoned.

CM No.9001-C-2014

Prayer in this application is for making good the deficiency of Court fee.

For the reasons mentioned in the application which is duly supported by an affidavit of applicant-appellant No.2, the same is allowed. The deficient Court fee which has been made good, is taken on record.

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Challenge in this appeal is to the judgment and decree passed by the Additional Civil Judge (Senior Division), Assandh, on 06.12.2010, whereby, the suit for possession by way of specific performance of an agreement to sell dated 25.06.1991 has been decreed by granting alternative relief of recovery of ₹40,000/- along with interest @ 8 per cent per annum and that too from the date of agreement to sell Ex.D-1 till actual realization of the decretal amount, appeal against which preferred by the respondent-plaintiff Smt. Lila Jindal has been allowed by decreeing the suit for specific performance of agreement to sell in favour of the plaintiff against the appellant-defendant by the Additional District Judge, Karnal, on 15.01.2014.

2. It is contention of the learned counsel for the appellants that the agreement to sell was entered into between the respondent-plaintiff and respondent-defendant No.1-Ashok Kumar for the sale

consideration of ₹40,000/-, which is asserted to have been paid on the date of execution of the agreement. No date for execution of the sale deed was fixed nor was the possession of the land handed-over. On 15.06.1993, this agreement to sell was cancelled by the respondent-defendant No. 1 Ashok Kumar. A General Power of Attorney was executed on 02.04.2003 in favour of appellant No.2-defendant No.3. On the basis of the said General Power of Attorney, appellant No.2-defendant No.3 executed a gift deed in favour of appellant No.1-defendant No. 2, on 09.06.2003. On this action taken by the respondent-defendant No.1 and appellant No.2- defendant No. 3, the respondent No.2-plaintiff Leela Jindal filed a suit on 05.10.2004 for possession by way of specific performance of the agreement to sell dated 25.06.1991.

He contends that firstly, after the cancellation of the agreement to sell, the suit itself is not maintainable as the agreement to sell is no more in existence specially when the said cancellation has been duly conveyed to the respondent-plaintiff in the year 1993 itself, but the suit as has been preferred is much beyond the period of limitation i.e. on 05.10.2004. That apart, he contends that the appellant-defendants have sold a portion of the property by carving out the plots to some other persons who have not been impleaded as a party. He, thus, contends that the judgments and decree passed by the Courts below cannot sustain and deserve to be set aside. He further contends that even if the findings are to be upheld as

recorded by the Courts below, the Court should have exercised its discretion in favour of the appellant-defendants as have been done by the learned trial Court by granting the alternative decree of recovery of the sale consideration of ₹40,000/- along with interest instead of the lower Appellate Court having passed a decree of specific performance in favour of the respondent-plaintiff. He, thus, contends that the judgment and decree passed by the Courts below deserve to be set aside and the suit of the respondent-plaintiff dismissed.

3. I have considered the submissions made by the learned counsel for the appellants and with his able assistance, have gone through the impugned judgments.

4. It is not in dispute that an agreement to sell was entered into between the respondent-plaintiff Smt. Leela Jindal and respondent-defendant no.1-Ashok Kumar on 25.06.1991 and the total sale consideration amount of ₹40,000/-, has been received by Ashok Kumar and no time was fixed for executing the sale deed. It has, however, been asserted that the agreement to sell was cancelled on 15.06.1993 and the said aspect has been duly conveyed to the respondent-plaintiff and in acknowledgment thereof, an affidavit had been duly executed by the respondent-plaintiff as well as her husband and therefore, the plea has been taken that the agreement to sell would not be binding as it has lost its character.

This plea would have been accepted only when the appellant-

defendants have been able to prove the due communication of the cancellation deed dated 15.06.1993 of the agreement to sell. As asserted, it was a settlement which has been entered in the form of a compromise between the parties but the same has not been proved on record. The affidavit which is asserted to have been executed by the respondent-plaintiff as well as her husband has also not been proved. In the absence of any evidence in support of the stand as has been taken by the appellant-defendants, the findings as recorded by the Courts below with regard to the fact that the agreement to sell dated 25.06.1991 still subsists, cannot be faulted with.

5. As regards the contention of the counsel for the appellants that on the basis of the General Power of Attorney executed in favour of the appellant No.2-defendant No.3 and ultimately the gift deed in favour of the appellant No.1-defendant No.2 and he on that basis having sold some land in the form of plots to some other persons and therefore, the suit for specific performance should not have been decreed by the lower Appellate Court in toto, cannot be accepted as the findings recorded by the Courts below clearly show that the said plots have been sold, which is a part of the agreement to sell, during the pendency of the suit. The principle of *lis pendens* as has been enumerated by the Lower Appellate Court relying upon the various judgments of the Supreme Court and this Court, cannot be faulted with.

upon the proper appreciation of the pleadings and the evidence brought on record as there is no misreading or non-consideration of the material on record nor is there any perversity or illegality in the same.

7. Keeping in view the fact that the appellant-defendants have not been able to prove their case before the Courts below although it has been asserted that they have also handed over consideration amount to respondent-defendant No.1 for the General Power of Attorney, they may proceed to take action, if permissible in law, against respondent-defendant No.1.

8. No substantial question of law arises in the present appeal which requires consideration of this Court. Therefore, finding no merit in the appeal, the same stands dismissed.

February 08, 2016

Harish

**(AUGUSTINE GEORGE MASIH)
JUDGE**