

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

**(1) RSA No.4843 of 2011 (O&M)
Date of Order: 25.09.2017**

Smt. Nirmala and others

..Appellants

Versus

Ganesh Malik and others

..Respondents

(2) RSA No.685 of 2012 (O&M)

Smt. Bimla and others

..Appellants

Versus

Ganesh Malik and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. R.S.Manhas, Advocate,
for the appellants (in RSA-4843-2011)

Mr. Shilak Ram Hooda, Advocate,
for the appellants (in RSA-685-2012)

Mr. Vikram Punia, Advocate,
for respondent no.1(in both the RSAs)

ANIL KSHETARPAL, J (Oral)

C.M.No.1896-C-2012

Allowed as prayed for.

**C.M.No.1897-C-2012 &
C.M.No.1898-C-2012
C.M.No.7700-C of 2008**

Prayer in these applications is for condonation of delay of 02
days in filing and 16 days in re-filing the appeal.

For reasons mentioned in these applications, which are supported by an affidavit, the delay of 02 days in filing and delay of 16 days in re-filing the appeal are condoned.

Applications are allowed.

C.M.No.1900-C-2012

Allowed as prayed for.

Annexure A-1 is taken on record.

C.M.No.1901-C-2012

This is an application for permission to lead additional evidence in order to produce sale deeds dated 29.05.2007 and 23.05.2007.

A reading of the judgment passed by the learned trial Court would show that during the evidence, it was in the knowledge of the parties that these sale deeds have been executed by legal heirs of Mehtab Singh partially honouring the agreement to sell. Aforesaid documents were very much in the knowledge of the appellants. Hence the application for additional evidence is dismissed.

Main case

By this Common judgment, I shall be disposing off Regular Second Appeal Nos.4843 of 2011 and 685 of 2012.

Defendants-appellants are in regular second appeal against the concurrent findings of fact arrived at by the Courts below.

Late Shri Mehtab Singh, predecessor-in-interest of the defendants-appellants had entered into an agreement to sell dated 28.09.2005. He received earnest money to the extent of Rs.2,00,000/-.

As per the agreement to sell, the date for registration of the sale deed was fixed as 31.05.2006.

Plaintiff filed a suit against Mehtab Singh, however, Mehtab Singh died during the pendency of the suit and his legal heirs were impleaded.

Learned trial Court after appreciating the evidence available on the file, recorded a findings of fact that the execution of the agreement to sell is proved on the file. It was brought to the notice of the learned trial Court that during the pendency of the suit, some of the legal heirs of Mehtab Singh had already executed a sale deed in favour of the plaintiff honouring the agreement to sell.

Two appeals were preferred, one appeal and second cross objections. Appeal and cross objections were dismissed, after re-appreciating the evidence available on the file. The cross-objections were also dismissed on the ground of delay and found to be not maintainable.

Before the first appellate Court, defendants- appellants in RSA No.685 of 2012, had filed an application for additional evidence so as to produce the instructions issued by the Collector with respect to collector's rate. The aforesaid application was dismissed by the first appellate Court by a separate order dated 16.08.2011.

Learned counsel for the appellants in RSA No.685 of 2012, has submitted that the application for additional evidence filed before the first appellate Court was not decided, therefore, the case should be remanded back.

As noticed earlier, the argument is factually incorrect. The application for additional evidence was decided by the first appellate Court vide order dated 16.08.2011. Even the aforesaid order has not been challenged before me.

Learned counsel for the appellants has further argued that the suit filed by the plaintiff was barred under Order 2 Rule 2 CPC. He submits that the plaintiff had earlier filed a suit for permanent injunction in March, 2006 but had withdrawn the same on 01.08.2006.

I have considered the submission of learned counsel for the appellants. There is no force in the same for two reasons.

First, the pleadings of the injunction suit have not been brought on the file. There is no issue framed by the Courts below. In the absence of pleadings of the previous suit, the bar under Order 2 Rule 2 CPC cannot be examined.

Second, as per the agreement to sell the date for execution and registration of the sale deed was 22.07.2006. The suit for injunction was filed before the target date. The suit for injunction was withdrawn after the plaintiff had filed a suit for specific performance.

In these circumstances, I do not find any force in the submission of learned counsel for the appellants.

Learned counsel for the appellants in RSA No.4843 of 2011 has submitted that the cross-objections have been wrongly dismissed on the ground of delay. He has further submitted that the cross-objections have wrongly been held to be not maintainable.

I have considered the submissions of learned counsel for the appellants.

The cross-objections are maintainable, if the other party has filed an appeal. In the present case, the appeal was filed by a co-defendant. In fact the co-defendant was legal representative of Mehtab Singh only like cross objections. Keeping the technicalities apart, all the appellants are

claiming the property through Mehtab Singh. The case of Mehtab Singh has been examined on merits while deciding RSA No.685 of 2012.

In these circumstances, I do not find any good ground to interfere with the concurrent findings of fact arrived at by the Courts below. Both the regular second appeals are dismissed.

September 25, 2017
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No