

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

RSA No.4868 of 2011 (O&M)

Date of Order: 20.09.2017

Avtar Singh

..Appellant

Versus

Kamikker Singh

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Surjit Singh Swaich, Advocate,
for the appellant.

Mr. J.S.Jaidka, Advocate,
for the respondent.

ANIL KSHETARPAL, J (Oral)

C.M.No.14182-c-2011

Allowed as prayed for.

C.M.No.14183-C of 2011

Prayer in this application is for condonation of delay of 18 days in re-filing the appeal.

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

Application is allowed.

RSA No.4868 of 2011

Defendant-appellant is in regular second appeal against the concurrent findings of fact arrived at by the Courts below.

Plaintiff filed a suit for possession by way of specific performance of the agreement to sell dated 08.12.2003, vide which 7 kanals and 10½ marls of land was agreed to be sold @ Rs.2,50,000/- per acre. Agreement to sell is Ex.P1 on the file.

Defendant on the other hand, pleaded that the signatures on blank

stamp papers were taken as plaintiff was partner and accountant in a commission agent firm. He denied receipt of any earnest money.

Learned trial Court after appreciating the evidence available on the file and after considering the statement of PW2-Baldev Singh, marginal witness held that the agreement to sell is proved on the file and payment of earnest money also stands established. The Court further found that the plaintiff was ready and willing to perform his part of the contract. With these findings, the suit filed by the plaintiff was decreed.

Defendant-appellant filed the first appeal. Learned first appellate Court after re-appreciating the evidence available on the file, dismissed the appeal.

I have heard counsel for the parties at length and with their able assistance gone through the judgments passed by the Courts below.

I have also seen photocopy of the agreement to sell which runs into two pages. On the first page, the defendant-appellant has signed on the left margin, whereas on the second page, defendant-appellant has signed at the place, where narration of the agreement comes to an end. Defendant-appellant had signed in English.

Learned counsel for the defendant-appellant has vehemently argued that the appellant had constructed a house in the land in question, however, there is no reference of the same in the agreement to sell. He submits that the agreement to sell is not depicting true and correct picture of the situation. Hence, plaintiff is not entitled to discretionary relief of specific performance of the agreement to sell.

On the other hand, counsel for the respondent has supported the judgments passed by the Courts below and has submitted that all the arguments have been considered by the Courts while recording the concurrent

findings of fact.

No doubt, defendant has pleaded that he had constructed the house on the land in question. However, once plaintiff has agreed to sell 7 kanals and 10½ marlas land, any structure thereon would obviously be part of the land. Defendant with open eyes had entered into an agreement to sell. Defendant has admitted his signatures on the agreement to sell. Still further there is concurrent findings of fact, which are not shown to be perverse.

In view of what has been discussed hereinabove, I do not find any good ground to interfere with the concurrent findings of fact arrived at by the Courts below. The regular second appeal is ordered to be dismissed.

C.M.No.8754-C-2016

This is an application under Order 41 Rule 27 for permission to lead additional evidence.

Defendant wants to produce on record a copy of application along with the report of the revenue officer that some construction exists on the spot.

A reading of the record would show that the only thing mentioned in the report is that a house is situated, however, neither the size of the house nor any detail has been given.

At the stage of the regular second appeal, application for additional evidence cannot be allowed particularly when this issue has already been examined by this Court.

In view of the above, the application is also dismissed.

September 20, 2017
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No