

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

RSA No.4286 of 2016 (O&M)

Date of Order: 18.08.2017

Gurnam Singh and others

..Appellants

Versus

Ranjit Singh and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. N.K.Vadhera, Advocate,
for the appellants.

ANIL KSHETARPAL, J(Oral).

C.M.No.11089-C of 2016

Prayer in this application is for condonation of delay of 93 days in re-filing the appeal.

For reasons recorded in the application, which is supported by an affidavit, the delay of 93 days in re-filing the appeal is condoned.

Application is allowed.

C.M.No.11090-C of 2016

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

For reasons mentioned in the application, which is supported by an affidavit, the same is allowed. Deficiency in Court fee has already been made good. Delay, if any, in making up the deficiency in payment of court fee is condoned.

RSA No.4286 of 2016

Defendants-appellants have filed this regular second appeal against the concurrent findings of fact arrived at by the Courts below.

Plaintiffs had filed a suit for possession by way of specific performance of agreement to sell dated 31.07.2006, with respect to land measuring 35 kanals 5 marlas. It was asserted that the land was agreed to be sold @ Rs.6 lacs per acre and earnest money of Rs.3,50,000/- was paid. The agreement to sell was signed/thumb marked by the defendants. It is further the case of the plaintiffs that sale deeds were to be executed and registered in two parts, one on 15.04.2007 and second on 31.12.2007. There was an extension of date of execution of the sale deed from 15.04.2007 to 15.07.2007.

Defendants contested the suit. Defendants denied the execution of the agreement to sell.

The plaintiffs in support of their case, produced the original agreement and examined one attesting witness, namely, Harbhajan Singh. Whereas, on the other hand, defendants examined three witnesses including the Handwriting and Finger Print Expert-DW3.

Learned trial Court after appreciating the evidence available on the file, decreed the suit filed by the plaintiffs.

Defendants-appellants filed first appeal, which was also dismissed after re-appreciating the evidence available on the file.

I have heard learned counsel for the appellants at length and with his able assistance gone through the judgments passed by the courts below.

Learned counsel for the appellants has submitted that once there was a report of Handwriting and Finger Print Expert, the decree could not have been passed against Harpinder Singh, one of the appellant. He further submits that the judgments passed by the Courts below are the result

of misreading of evidence.

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

The report of Handwriting and Finger Print Expert has been taken into consideration by the Courts below. The first appellate Court has recorded as under:-

“DW3 Doctor Parveen Kumar Janjua, who is Handwriting and Finger Print Expert, has admitted in his cross examination that he has not obtained the specimen signatures in the presence of plaintiff or his counsel and he has not sought the permission for obtaining the signatures from the court himself. So the standard signatures are not taken in the presence of the court nor taken from the public document.”

A reading of the observation made by the learned first appellate Court, the opinion given by the Handwriting and Finger Print Expert cannot be relied upon. Still further, there is direct evidence available on the file. Attesting witness has been examined. Harpinder Singh is only one of the defendant-appellant, other defendants-appellants are Manjit Kaur mother of Harpinder Singh and Harpal Singh brother of Harpinder Singh. Their signatures and thumb impressions exists on both the pages. It is true that Harpinder Singh has only signed on the last page. However, other defendants have signed each page. Hence, signatures of Harpinder singh are proved on the agreement to sell.

It has been noticed that private Handwriting and Finger Print Experts give opinion in favour of the party who engages them. The opinion

of the private Handwriting and Finger Print Expert is not binding on the Court. It is only in the form of opinion.

Learned counsel for the appellants has further submitted that there is misreading of evidence and, therefore, the judgments passed by the Courts below are liable to be set aside.

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

Counsel for the appellants has not been able to point out any substantive misreading of evidence, which would change the result of the case. The minor variation in the statements of the witnesses are natural because they are deposing after a considerable time.

Taking into consideration the facts and circumstance of the case, I do not find any reason to interfere with the concurrent findings of fact, arrived at by the Courts below. The regular second appeal is ordered to be dismissed.

August 18, 2017
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(ANIL KSHETARPAL)
JUDGE

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