

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

RSA No.4876 of 2016 (O&M)

Date of decision : 02.08.2017

Mohan Singh

...Appellant

Versus

Pritam Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. S.S. Khaira, Advocate for the appellant.

ANIL KSHETARPAL, J.

CM No.12706-C of 2016

This is an application for granting more time to make up the deficiency in the Court fees. The application is dated 31.08.2016. However, the appellant has failed to make up the deficiency in the Court fees.

Therefore, the application is dismissed.

CM No.12707-C of 2016

This is an application for condonation of delay of 309 days in filing the present appeal.

For the reasons stated in the application, which is duly supported by an affidavit, delay of 309 days in filing the present appeal is condoned.

Application stands allowed.

Main Case

The plaintiff is in present Regular Second Appeal against the concurrent judgments passed by the Courts below.

Although, the appellant has not made up the deficiency in the court fees, however, irrespective of the fact that the court fees has not been paid, I proceed to decide the case on merits also.

The plaintiff had filed a suit for possession by way of specific performance of the agreement to sell dated 15.01.1993. The plaintiff had pleaded that the defendant No.1 who was owner of 14 kanals of land had executed agreement to sell in favour of the plaintiff on 15.01.1993. The plaintiff further claims that ₹60,000/- was paid as earnest money. The suit was filed on 03.12.2008.

The defendants contested the suit and asserted that the suit filed by the plaintiff was beyond limitation. The defendants further claimed that the agreement to sell is forged and fabricated document. It was pleaded that in fact the defendant No.1 was in need of money and, therefore, he borrowed ₹60,000/- as loan. Under that pretext, signatures were obtained on blank papers.

The learned trial Court after appreciating the evidence available on the file dismissed the suit filed by the plaintiff. It has been found that the defendant No.1 had sold the property to the defendant No.2 in the year 2004.

The first appeal preferred by the plaintiff was ordered to be dismissed after re-appreciating the evidence. The reasons recorded by the First Appellate Court are extracted as under:-

“13. After considering the rival contentions of the parties and after going through the record, I am of the considered view that there is no merit in this appeal. Ex.P1 is the agreement to sell vide which respondent No.1 agreed to sell

the suit property to the appellant @ Rs.50,000/- per acre after receiving Rs.60,000/- as earnest money. Although respondent No.1 has not appeared in the witness box to deny the execution of this agreement but it was duty of the appellant to dispel the suspicious circumstances surrounding this agreement, which he has failed to do. Of course agreement to sell is not required to be attested by a witness but this agreement is attested by the witnesses and they have been produced in the court as witnesses by the appellant but they did not appear for cross-examination. Had they been examined by the appellant, then their evidence would have gone long way to prove the genuineness of this agreement, but they were never produced for cross-examination. Rather, from the cross-examination of the appellant, it stands evident that it is he, who has forged and fabricated the affidavit of PW1 Mohan Singh son of Diwan Singh by signing his affidavit Ex.PW1/A. Such a party is not entitled indulgence of the Court. This agreement is alleged to have been scribed by one Vijay Kumar, Advocate and it appears to have been entered at Sr. No.996 but said scribe has not been produced for proving this agreement and for proving that it was actually entered by him in his register. It has been held by the Hon'ble Punjab and Haryana High Court in Rachhpal Singh Vs. Sandhura Singh, 2013(3) Civil Court Cases 242 that only scribe could have deposed about the contents of the agreement having been read over and explained to the executant. So, adverse inference is likely to be drawn against the appellant for his non-examination. Of course no time limit has been given for executing the sale deed in the agreement Ex.P1 but even then it was duty of the appellant to get the sale deed executed within a reasonable time. Hon'ble Supreme Court in Azhar Sultana Vs. B. Rajamani &

others, 2009(2) Civil Court Cases 1 has observed that Court while exercising discretion is entitled to take into consideration as to whether the suit had been filed within a reasonable time. In this case suit has been filed after a period of more than 15 years of the execution of the agreement to sell. If there is undue delay and indifference on the part of the plaintiff, then his willingness deserves to be doubted, as observed by the Hon'ble Andhra Pradesh High Court in Malireddy Buthiramanna Dora & another Vs. Dasari Veerabhadra Rao & another, 2012(1) Civil Court Cases 656. Then appellant has miserably failed to prove the endorsement Ex.P1 on the back of the agreement by examining any witness although one is his real brother. No explanation has been given why date for the execution of the sale deed was fixed in this endorsement although it was never fixed in the agreement to sell. Then it is the pleaded case of the appellant that agreement to sell in question was executed for a consideration of Rs.50,000/- per acre but in the endorsement it has been mentioned that it was executed for Rs.60,000/- per acre and Rs.50,000/- have been paid as earnest money, whereas it is in the plaint as well as in the agreement to sell that Rs.60,000/- was given as earnest money. Then it is mentioned in the endorsement that suit property has been mortgaged and that the appellant could get the sale deed executed within one month after receiving notice of its redemption by the respondent No.1. There is absolutely nothing on the file that the suit property was ever mortgaged by respondent No.1. Even respondent No.2 has denied having mortgaged this property in his written statement. Appellant has also failed to prove his possession over the suit property. Therefore, I do not find any scope to interfere in the findings recorded by the learned trial Court and the same stands affirmed.”

Counsel for the appellant/plaintiff has submitted that in fact signatures on the agreement to sell dated 15.01.1993 are admitted. It is the case of the defendant that his signatures on the blank papers were obtained.

I have considered the submissions. In the present case, agreement to sell is proved to be a suspicious document. It is true that the agreement to sell is not required to be attested by attesting witnesses. In this case, agreement to sell is attested by two attesting witnesses who had appeared in the witness-box for examination-in-chief but did not appear for cross-examination. Therefore, their statement cannot be read in evidence. Further from the reading of the cross-examination of the appellant, it is evident that the plaintiff has forged and fabricated the affidavit of PW1 Mohan Singh. Further, the agreement is alleged to have been scribed by Sh. Vijay Kumar, Advocate. According to him, it is entered at Sr. No.996. However, the scribe has not been produced any record to prove that the agreement to sell was entered into his register.

Taking into consideration the facts available on the file as well as the judgments passed by the Courts below, there is no scope for interference. Accordingly, the present Regular Second Appeal is dismissed.

02.08.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No