

131 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

SAO No. 7 of 2017 (O&M)
DECIDED ON: JANUARY 18, 2017

BAL KISHAN @ BAL KRISHAN

....PETITIONER

VERSUS

SATPAL PESSEY & OTHERS

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Ms. Kashish Garg, Advocate
for the appellant.

JASPAL SINGH, J

Challenge in this appeal is to the order dated October 19, 2016 passed by learned Additional Sessions Judge, Bathinda whereby an application for permitting the appellant to sue/file the appeal as an indigent person, has been dismissed.

While assailing the impugned order, it has been contended by learned counsel for the appellant that respondents No.1 and 2/plaintiffs filed the suit for specific performance of an agreement to sell dated April 18, 2001 regarding the vacant land measuring 4000 sq. yards, equal to 4 bighas bearing Kh. No. 3667/2 on payment of balance sale consideration or in the alternative for the recovery of ₹10,00,000/- i.e. ₹5,00,000/- paid as earnest money and ₹5,00,000/- as damages alongwith interest @18%; And suit for declaration to

the effect that the sale deeds executed by defendant No.1 in favour of other defendants are null and void. Appellant/defendant No.1 also filed the counter claim alongwith written statement. However, the suit of respondents No.1 and 2/plaintiffs was decreed with costs in the alternative for the recovery of ₹5,00,000/- alongwith interest @9% per annum till the filing of suit and further, pendente lite and future interest @ 6% per annum, from the date of decree till its realization. Whereas, counter claim filed by the appellant was dismissed.

Aggrieved against the above-said judgment and decree and dismissal of claim preferred by him, appellant filed an appeal alongwith an application seeking permission to allow him to sue/file the appeal as an indigent person; but that application has been declined vide impugned order, which necessitated the filing of instant appeal.

Learned counsel for the appellant further contends that the lower Appellate Court has mis-appreciated the law as well as evidence adduced by the appellant, while passing the impugned order. The lower Appellate Court has failed to appreciate that the appellant has no other property except the house in which he is residing and even, as per the provisions under Order XXXIII Rule 1 of the Code of Civil Procedure as well as amendment carried out by the Punjab State in this regard, the residential house is exempted and cannot be taken into consideration while deciding the application of the appellant as to whether he is indigent person or not.

Even the lower Appellate Court has also ignored and disbelieved the Collector's report, according to which the appellant does not possess any movable or immovable property except the house in which he is residing. Thus, the impugned order is not sustainable in the eyes of law and deserves to be set

aside. Consequently, application seeking permission to sue/file him appeal as an indigent person deserves to be allowed.

No doubt, the residential property is exempted and cannot be taken into consideration while assessing or determining the indigency of the applicant/appellant but he has been accorded ample opportunity to lead evidence. A glance at the impugned order transpires that the appellant attached the list of properties/articles owned and possessed by him worth ₹650/- only, which stood falsified from his testimony itself. While appearing in the witness box, it has been stated by the appellant that he is having one ancestral house No. 9259 located in Mohallan Pujan Wala, Bathinda where he is residing. In his cross-examination he has admitted that he is in exclusive possession of said house consisting of four rooms and the area of said house is 160 sq. yards. Not only this he has also admitted that he also entered into an agreement to sell with respondent No.1-Satpal regarding 4000 sq yards of land which was owned by him and further that the said land was sold by him and sale consideration to the tune of ₹16,00,000/- has been received by him. Not only this there is also an admission on his part that earlier he was running the business of transport carrier and company owns his name. He is also having bank account in Union Bank, Mall Road, Bathinda regarding which, the documents were not produced, despite direction and an adverse inference was drawn by the lower Appellate Court. At the time of execution of agreement to sell allegedly executed in between the appellant and respondent No.1, he received a sum of ₹5,00,000/-. So, by no stretch of imagination, it can be said that he is an indigent person. Number of plots have also been sold by him to different persons vide which, sale deeds Mark A to Mark Z. Even, at present, he is the owner of 1 kanal 12

Marla of land as per the jamabandi available on lower Court records. All these facts clearly shows that the list of properties furnished by him alongwith application seeking permission to file appeal as an indigent person is absolutely wrong. Applicant is prima facie proved to be a person having sufficient property. As such he cannot be said to be an indigent person.

In the light of above-said discussion, this Court does not find any merit in the instant appeal. As such the same is dismissed.

JANUARY 18, 2017
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(JASPAL SINGH)
JUDGE

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*