

RSA No.5068 of 2011 (O & M)
RSA No.3266 of 2012 (O & M)

-1-

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

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RSA No.5068 of 2011 (O & M)
Date of Decision:18.04.2018

Dharamvir and another

...Appellants

Versus

Rulia Ram

...Respondent

RSA No.3266 of 2012 (O & M)
Date of Decision:18.04.2018

Dharamvir and another

...Appellants

Versus

Rulia Ram

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Parminder Singh, Advocate
for the appellants.

Mr. Munish Mittal, Advocate
for the respondent.

ANIL KSHETARPAL, J.(Oral)

CM No.14801-C-2011 in RSA No.5068 of 2011

Exemption as prayed for is allowed.

CM No.14802-C-2011 in RSA No.5068 of 2011

For the reasons stated in the application, which is duly supported by an affidavit, delay of 443 days in refiling the appeal is condoned.

Application is allowed.

CM No.14803-C-2011 in RSA No.5068 of 2011

For the reasons stated in the application, which is duly

supported by an affidavit, delay of 75 days in filing the appeal is condoned.

Application is allowed.

CM No.8696-C-2012 in RSA No.3266 of 2012

Exemption as prayed for is allowed.

CM No.8697-C-2012 in RSA No.3266 of 2012

For the reasons stated in the application, which is duly supported by an affidavit, delay of 814 days in filing the appeal is condoned.

Application is allowed.

RSA No.5068 of 2011 and RSA No.3266 of 2012

Defendant-appellant has filed these two appeals arising from a civil suit in which counter claim for specific performance of agreement to sell was also sought for.

Learned counsel for the parties are agreed that both the appeals can be disposed of by a common judgment as the property in dispute is common and parties to the litigation are also common.

Plaintiff-respondent-Rulia Ram filed a suit for mandatory injunction and permanent injunction directing the defendants to return the writing dated 21.06.2002 and registered sale deed dated 05.05.1999. Plaintiff also prayed for decree for permanent injunction restraining the defendants from interfering or dispossessing the plaintiff from the house in dispute. Defendants-appellants filed written statement and also filed counter claim seeking specific performance of agreement to sell dated 21.06.2002.

Learned trial Court after appreciating the evidence available on the file, dismissed the suit as well as counter claim. Two appeals were

preferred before the learned First Appellate Court. Learned First Appellate Court upheld the finding of the dismissal of the counter claim but decreed the suit filed by the plaintiff to the extent that the agreement to sell dated 21.06.2002 and the sale deed dated 05.05.1999 be returned to the plaintiff.

It is not disputed that defendant No.2 is daughter of maternal uncle of the plaintiff whereas defendant No.1 is her husband. The alleged agreement to sell has been disbelieved by both the Courts below while giving following reasons:- (i) None of the two marginal witnesses has appeared and supported the agreement to sell; (ii) the stamp paper on which the agreement to sell is allegedly executed is not proved to have been purchased by Rulia Ram-plaintiff as there are no signatures of Rulia Ram on the endorsement of the stamp vendor, although, stamp vendor while appearing in the witness box has stated that Rulia Ram had signed the endorsement; (iii) the register of the stamp vendor has not been produced; (iv) Sukhbir Singh, the marginal witness has appeared as PW-2 and has admitted that he has signed the aforesaid writing but he has specifically stated that the aforesaid document was executed only as a security/guarantee for refund of certain amount from Riaz Hassan. Sukhbir Singh has not been cross-examined on this aspect of the matter. Sukhbir Singh has also stated that no earnest money was paid in his presence.

Learned counsel for the appellant has vehemently argued that there is a document, which is signed by the plaintiff. He has submitted that the document runs into two pages and both the pages have been signed by Rulia Ram. He has submitted that Rulia Ram admits his signature, therefore, he submits that the agreement to sell is proved on file. Learned counsel has

further submitted that Sukhbir Singh has also admitted his signatures on the agreement to sell Ex.D-1.

This Court has considered the submissions and with the able assistance of the learned counsel for the parties gone through the judgments passed by the Courts below and the record. No doubt, Rulia Ram admits his signatures on the writing dated 21.06.2002. It is the plaintiff-Rulia Ram, who has demanded the aforesaid document from the defendants. He has come to the Court with specific assertion that the aforesaid writing was executed as a security on account of certain transaction between Riaz Hassan and the defendants. This writing is attested by two attesting witnesses namely Rishi Pal and Sukhbir Singh. Rishi Pal appeared in favour of Rulia Ram-plaintiff but he could not appear for cross-examination as he died. Other marginal witness Sukhbir Singh has appeared as PW-2 and has specifically stated that the aforesaid writing was not for the purpose of agreement to sell but was for the purpose of securing the payment and it was agreed that the writing would be returned once the transaction between Riaz Hassan and the defendants is complete. He has submitted that the plaintiff had given this document and the registered sale deed in his favour due to close relationship between the plaintiff and defendants.

Learned counsel for the appellant has read over the statement of PW-2 Sukhbir Singh. Attention of the witness has not been drawn to the aforementioned statement and no suggestion has been given to Sukhbir Singh challenging the statement made in examination-in-chief to the effect that the document was executed as a security document.

Still further, as noticed by the Courts, the register of the stamp

vendor has not been produced. The agreement to sell is executed on a plain paper whereupon adhesive stamp has been affixed of Rs.4/-. Even both the pages are of different size as page No.1 is of A-4 size and page No.2 is of A-6 size. On the second page, there is a revenue stamp of Rs.1/-, which is on the extreme left and margin.

In view of the concurrent finding of fact arrived at by the Courts below on appreciation of evidence on file, which is not proved to be misreading and non-reading of evidence, this Court does not find any good ground to interfere with the findings of fact arrived at by the Courts below.

Both the appeals are dismissed.

All the miscellaneous applications shall stand disposed of.

18.04.2018
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(ANIL KSHETARPAL)
JUDGE

Whether Speaking/Reasoned: Yes/No
Whether Reportable : Yes/No