

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

101 (2 cases)

Date of Decision : 13.07.2018

1) CM-6839-C-2015 in/and RSA-2727-2015 (O&M)

Rajesh Kumar

..... Appellant

Versus

Kehar Singh and others

..... Respondents

2) CM-6759-C-2015 in/and RSA-2657-2015 (O&M)

Rajesh Kumar

..... Appellant

Versus

Naresh Kumar and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present: Mr. Ravinder Malik (Ravi), Advocate
for the applicant-appellant.

AJAY TEWARI, J. (Oral)

CM Nos.6839 & 6759-C-2015

For the reasons recorded, the applications are allowed. Delay of 41 days in filing the appeal bearing RSA No.2727 of 2015 and delay of 50 days in filing the appeal bearing RSA No.2657 of 2015 is condoned.

RSA-2727 & 2657 of 2015 (O&M)

These appeals have been filed against the judgment of the lower appellate court modifying that of the trial court and converting a decree of specific performance into a decree for return of money. Since

common question of law is involved both appeals are decided by the common order.

The case of the appellant was that Darshan Singh had entered into an agreement to sell for land measuring 12 kanals 3 marlas for an amount of Rs.3 lakhs on 10.05.2000. The notified date was fixed as 09.05.2001 after exactly one year. After waiting for another three years the appellant issued notice in March, 2004 and thereafter filed the instant suit 2 days before the limitation was to expire on 07.05.2004. In the suit the appellant pleaded that he had paid an amount of Rs.1 lakh and was put into possession of the land. In the original plaint, he also averred that immediately after taking the possession he had put Darshan Singh back in possession on batai of 2/3rd. Subsequently the averment regarding putting Darshan Singh back in possession by the appellant on batai of 2/3rd was deleted by way of amendment. It was pleaded that after the receipt of the notice said Darshan Singh had exchanged his land with his brother and was consequently prayed that decree for specific performance be issued.

The case of Darshan Singh on the other hand was that actually he had taken a loan from the appellant and the appellant had gotten the agreement to sell executed. It was denied that the appellant was ever put into possession. During the trial of the suit the appellant abandoned the plea that he had been put in possession. The trial court noticed that the scribe and witnesses had supported the case of the appellant and decreed the suit.

Two appeals were filed by the subsequent transferees. The lower appellate court noticed that it was the case of Darshan Singh that on

an earlier occasion his brother Makhan Singh had similarly taken a loan of

Rs.95,000/- from the appellant and even on that occasion the appellant had got executed the agreement to sell and interestingly the scribe and the witnesses of that agreement sell were the same who had scribed and witnessed the agreement to sell in question. When this document was put to the appellant in his cross-examination he accepted it but try to explain it by saying that on that occasion Makhan Singh had prevailed upon him to cancel the agreement to sell after returning him the money. The lower appellate court ultimately came to the conclusion that the case set up by Darshan Singh was more probable and set aside the decree for specific performance but ordered refund of the money with 7.5% interest and that is how the appellant is before this Court.

Counsel for the appellant has argued that once the scribe and the witnesses had duly proved the execution of the agreement to sell and the receipt of the money the findings by the appellate court were completely conjectural and has therefore prayed that the decree of the trial court be restored.

In my considered opinion, the appeal must fail. The salient facts are :-

- i. Fixing of the date after one year.
- ii. The filing of the suit 2 days before the limitation was to expire.
- iii. The averment that the appellant was put into possession.
- iv. The fact that on previous occasion a similar transaction had entered into with the brother of Darshan Singh.

Counsel for the appellant has not been able to explain these

In the totality of circumstances, I am not persuaded that the findings of fact are either based on no evidence or based on such perverse misreading of evidence so as to justify the interference of this Court under Section 100 of the Code of Civil Procedure.

Appeal is dismissed. No costs.

Since the main cases have been decided, the pending civil miscellaneous application, if any, also stands disposed of.

July 13, 2018
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(AJAY TEWARI)
JUDGE

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No