

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

105

**RSA No.4770 of 2016 (O&M)
Date of decision: 30.11.2018**

Satish Kumar

...Appellant

Vs.

Amrik Singh and Another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ashish Yadav, Advocate
for the appellant.

AMIT RAWAL, J.(ORAL)
CM No.12320-C of 2016

Prayer made in the application is for condonation of delay
of 47days in re-filing the present appeal.

In view of the grounds taken in the application, CM is
allowed and delay of 47 days in re-filing the present appeal is
condoned.

CM stands disposed of.

CM No. 12321-C of 2016

Prayer made in the application is for condonation of delay
of 4 days in filing the present appeal.

In view of the grounds taken in the application, CM is
allowed and delay of 4 days in filing the present appeal is
condoned.

RSA No. 4770 of 2016

Appellant-defendant has not been successful in defending
the suit for declaration laying challenge to the sale deed dated

16.01.2007 allegedly executed by Tarlochan Singh Walia in his

favour. The respondent-plaintiff claimed that Tarlochan Singh Walia had already died on 30.05.1998 at U.K. Therefore, the sale deed by him is result of fraud and FIR No. 795 (Ex. P-11) dated 08.11.2007 under Sections 420, 406, 467, 468, 471 and 120-B IPC in this regard was also registered against the appellant-defendant (Teeka Ram) and two other witnesses including Raj Kumar. On the basis of aforementioned evidence, trial Court decreed the suit. Appellant- defendant was also not successful before the lower appellate Court.

Mr. Yadav, learned counsel appearing on behalf of the appellant contended that death certificate Exhibit P-6 of Tarlochan Singh of U.K. was not in accordance with the provisions of Section 34 Sub Section 6 of Birth and Death Registration Act as applicable to U.K. as this certificate did not bear the stamp of the Registrar. The Courts below have erroneously applied the provisions of the Section 82 of the Indian Evidence Act. Even the Will dated 18.03.1996 was only a notarized copy/record. In such circumstances, the appellant was liable to be declared as bona fide purchaser for a valueable consideration as witnesses of the Will have also not been examined.

The aforementioned arguments are not sustainable as the appellant-defendant could have led evidence by examining witnesses qua the execution of the sale deed. For the reasons best known to the appellant that they have not been examined. Numberdar was examined but he could not identify the witnesses and said that he met them for the first time in Tehsil Office.

Much emphasis have been laid upon death certificate but

on going through the record handed over during the course of hearing shows that Exhibit P-5 and Exhibit P-6. Exhibit P-15 and Exhibit P-17 are receipts of funeral expenses as well as probate proceedings issued by the competent Court at Oxford. The order of the probate Court of England dated 04.11.1999 certified the death of Tarlochan Singh as on 30.05.1998.

All the aforementioned facts weighed in the mind of Courts below in setting aside the alleged sale deed. In my view defendant has failed to discharge the onus. No illegality or perversity is found in the judgment and decrees passed by both the Courts below. I do not find any reasons to interfere in concurrent findings of Courts below.

Hence, the appeal is dismissed.

November 30, 2018

Poonam (II)

**(AMIT RAWAL)
JUDGE**

- | | | |
|----|------------------------------|-----------------|
| 1. | Whether reportable? | Yes / No |
| 2. | Whether reasoned / speaking? | Yes / No |