

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.5625 of 2016 (O&M)
Date of Order:05.07.2018

Kirpal Singh

..Appellant

Versus

Kamaljit Kaur and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. K.S.Dhillon, Advocate,
for the appellant.

Mr. Sudhir Pruthi, Advocate,
for respondents no.1 and 2.

ANIL KSHETARPAL, J(Oral)

C.M.No.14727-C-2016

Prayer in this application is for condonation of delay of 02 days
in re-filing the appeal.

For reasons mentioned in the application, which is supported by
an affidavit, the delay of 02 days in re-filing the appeal is condoned.

Application is allowed.

C.M.No.14728-C-2016

Allowed as prayed for.

MAIN

Plaintiff-appellant is in the regular second appeal against the
judgment passed by the learned first appellate court, accepting the appeal
filed by defendants no.1 and 2 and reversing the judgment and decree
passed by the learned trial Court.

Certain facts are required to be noticed.

Plaintiff is brother of defendant no.3-Jagtar Singh and he is uncle of defendants no.4 and 5. Defendants no.4 and 5 are son and daughter-in-law of defendant no.3, brother of the plaintiff. Plaintiff filed a suit for possession by way of specific performance of the agreement to sell dated 10.10.2005 on 22.10.2008, although, as per his own case, the target date for execution and registration of the sale deed was 25.10.2005. Defendants no.1 and 2, who were owners, pleaded that in fact defendants no.1 and 2 had executed three registered sale deeds on 13.10.2005 in favour of defendants no.3 to 5, namely, the brother of the plaintiff and his nephews through the power of attorney executed on 11.10.2005 and signatures may have been obtained on the blank papers, which were later on converted into an agreement to sell.

Learned trial court after appreciating the evidence available on the file decreed the suit while ordering refund of the earnest money. However, learned first appellate court after analyzing the entire evidence available on the file dismissed the suit filed by the plaintiff.

Learned first appellate court has noticed the relationship between the parties. The learned first appellate court has also noticed that the plain paper has been converted into a non-judicial stamp paper by affixing adhesive stamps of Rs.300/-. The payment of earnest money has also not been proved. Stamp vendor has also not been examined. The alleged scribe who has been examined as PW3 has stated that he is not a licensed deed writer.

Still further, the facts which have been disclosed by counsel for the parties during the course of arguments, clearly indicates that all is not

well in the present case. Originally, defendant no.3 was owner of the property. He was to pay large sum to defendant no.2. In lieu of the payment, defendant no.3 executed a registered sale deed in favour of defendants no.1 and 2. However, thereafter, defendant no.3 offered to purchase the aforesaid property from defendants no.1 and 2. For that purpose, first of all defendants no.1 and 2 executed an agreement dated 11.10.2005. On 11.10.2005 itself, defendants no.1 and 2 executed an attorney in favour of one Mukesh Kumar and on the basis of the aforesaid attorney, three sale deeds were executed on 13.10.2005 in favour of defendants no.3, 4 and 5, who are the brother, the son of the brother and the daughter-in-law of the brother of the plaintiff.

Learned first appellate court has appreciated the evidence and on critical examination thereof, while reversing the finding of the trial court, substituted its own finding. Such finding is neither shown to be perverse nor suffering from any substantive error.

In these circumstances, there is no scope for interference with the findings of fact arrived at by the learned first appellate court.

The regular second appeal is dismissed.

July 05, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No