

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

RSA No.6066 of 2016 (O&M)

Date of Decision.08.02.2018

Surjit Singh

.....Petitioner

Vs

Iqbal Singh and others

....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Prateek Pandit, Advocate
for the petitioner.

Mr. Vikram Anand, Advocate
for the respondents.

AMIT RAWAL J.(ORAL)

C.M.No.1806-C of 2018

Learned counsel for the non-applicant/respondents submits that he wants to withdraw the application for placing on record reply to the application seeking condonation of delay of 108 days in filing the appeal.

Ordered accordingly. The application is dismissed as withdrawn.

C.M. No.15982-C of 2016

The present appeal is accompanied by an application for condonation of delay of 108 days in filing.

For the reasons stated in the application, delay of 108 days in filing the appeal is condoned.

Application is allowed.

RSA No.6066 of 2016

The regular second appeal is directed against the judgment and decree of the lower Appellate Court whereby the suit seeking specific

performance of the agreement to sell dated 06.03.2010 in respect of land measuring 12 kanal 10 marla, half share each of the vendors namely Surjit Singh and Jeet Singh has been decreed qua the half share of appellant-defendant No.1 only as with regard to other half share, sale deed dated 31.1.2011 had already been executed in the name of Sukhwinder Kaur.

Mr. Prateek Pandit, learned counsel appearing for the appellant-defendant No.1 submits that the aforementioned suit was filed by the respondents-plaintiffs namely Iqbal Singh and Darbara Singh in pursuance of the agreement to sell executed by Surjit Singh and Jeet Singh, both brothers, sons of Santa Singh, having half share in the total land measuring 12 kanals 10 marlas against total consideration of ₹12,60,000/- on payment of earnest money of ₹5 lacs. The stipulated date for execution and registration of the sale deed was 06.10.2010 but later on it was extended to 22.11.2010. The suit was filed on 21.07.2011. Before the suit could be filed, the other brother i.e. Jeet Singh-defendant No.2 had already executed sale deed dated 31.1.2011 at the asking of the plaintiffs in favour of Sukhwinder Kaur. Noticing the aforementioned fact, the trial Court did not grant a discretionary relief but only ordered for refund of the earnest money. The aforementioned judgment and decree was assailed by the plaintiffs as the suit was decreed only to the extent of recovery of the amount of ₹2,50,000/- from the defendants along with interest @9% per annum from the date of execution of the said Agreement to Sell dated 06.03.2010 till its realization. However, the lower Appellate Court committed illegality and perversity while exercising discretion under Section 20 of the Specific Relief Act by ordering specific performance of agreement to sell, in essence, suit in toto has been decreed. It was a speculative deal at the

instance of the respondent-plaintiff as the sale deed dated 31.1.2011 was for higher amount i.e. ₹7,85,000/- for a half share, which would have otherwise been for ₹6,30,000/-. There was a margin of ₹1,55,000/-. The market value of the property was much more than the one reflected in the sale deed. Readiness and willingness on the part of the respondents-plaintiff was conspicuously absent as neither Sukhwinder Kaur nor Jeet Singh had come into witness box. All these facts have not been looked into by the lower Appellate Court in setting aside the judgment and decree passed by the trial Court.

Per contra, Mr. Vikram Anand, learned counsel appearing on behalf of the respondent-plaintiff submitted that since there was no interim stay granted in the pending suit, sale deed dated 31.1.2011 was executed in respect of half share of 12 kanals 10 marlas in favour of the plaintiff, which was not a speculative deal. Another brother Jeet Singh did not object for execution of the sale deed in favour of Sukhwinder Kaur as there was a clause in the terms and conditions of the agreement. The readiness and willingness has been proved to the hilt as the plaintiffs had also proved on record his presence before the Sub Registrar on the stipulated date i.e. 22.11.2010. The discretionary relief was, thus, justified as the agreement to sell has not been denied except a bald assertion in the written statement that his brother mis-represented him for obtaining thumb impression on the agreement to sell, therefore, urges this Court for dismissal of the appeal by upholding the finding rendered by the lower Appellate Court.

I have heard learned counsel for the parties and appraised the paper book. The facts noticed above have not been controverted by the counsel representing the parties to the *lis*. The only point which has to be

looked into by this Court is whether the lower Appellate Court being the last court of fact and law has committed illegality and perversity in exercising the discretion under Section 20 of the Specific Relief Act or not. For that, the lower Appellate Court below referred to the documentary evidence brought on record, particularly, the presence Ex.P4 that the plaintiff was present before the Sub Registrar for execution whereas the appellant-defendant, half share holder in the aforementioned land, did not come present. The other brother had already performed the part of the agreement by executing a sale deed dated 31.1.2011 for allegedly a higher amount than the one falling to his share i.e. instead of ₹6,30,000/- out of ₹12,60,000/-, it has been ₹7,85,000/-. There is a difference of ₹1,55,000/-. It cannot be termed as speculative deal as it was on account of own volition. It cannot be said to be a speculative deal as in that case it would have been grievance of Jeet Singh and not Surjit Singh i.e. the present appellant. The execution of agreement to sell has not been disputed. Fraud and misrepresentation has also not been proved on record i.e. ingredients as envisaged under Order 6 Rule 4 CPC has not been discharged by any direct and cogent evidence. In my view, the question posed above is answered in favour of the respondent-plaintiff. The lower Appellate Court has rightly exercised the discretion in ordering specific performance of agreement to sell, much less, much water has flown by now for causing interference in the judgment and decree of the lower Appellate Court. The appellant-defendant No.1 is required to be compensated with regard to difference of price in respect of share sold way back in the year 2011 vide sale deed dated 31.1.2011 for higher amount than the one agreed for.

Therefore, by taking into consideration the passage of time, the

judgment and decree of the lower Appellate Court is modified with direction to compensate the appellant-defendant No.1 to pay ₹2 lacs within a period of two months from the date of receipt of certified copy of this judgment.

In view of the aforementioned, I do not find any illegality and perversity in the judgment and decree passed by the lower Appellate Court, much less, no substantial question of law arises for determination by this Court. Resultantly, the second appeal stands dismissed.

(AMIT RAWAL)
JUDGE

February 08, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No