

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

RSA No. 6317 of 2016 (O&M)

Date of decision : 12.09.2018

Sangat Singh

....Appellant

V/s

Amandeep Kaur & anr.

....Respondents

BEFORE : HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. Naresh Kumar Manchanda, Advocate for the appellant.

RAJAN GUPTA J.

C.M. No. 16567-C of 2016

Present application has been filed under section 151 CPC for condonation of 2 days delay in refilling the appeal. For the reasons mentioned in the application, same is allowed. Delay of 2 days in refilling the appeal is condoned.

RSA No. 6317 of 2016

The trial court vide judgment and decree dated 16.08.2014 while declining the relief for specific performance of agreement dated 30.08.2005, decreed the suit of plaintiff/appellant for an alternative relief for recovery of ₹10,000/- along with pendente lite interest @ 12% p.a. till the date of advancement of the loan i.e. 30.08.2005 till realization. Whereas, first appellate court dismissed the appeal filed by the appellant. As such, aggrieved by the judgment of two courts below, appellant has preferred this second appeal. Learned counsel for the appellant submits that findings of both the courts below with regard to relief of specific performance are based on misreading of evidence and consequently not sustainable. According to

him, findings arrived at are contrary to evidence on record. Interference is, thus, called for in second appeal.

I have heard learned counsel for the appellant.

Plaintiff-appellant filed suit against defendants-respondents for possession of house in question by specific performance of the agreement to sell dated 30.08.2005, alternatively for recovery of ₹65,000/- alongwith interest. The plaintiff alleged that defendants agreed to sell the suit property to him for a consideration of ₹65,000/- and an agreement to sell dated 30.08.2005 was executed in his favour. Pursuant to same, defendants received an amount of ₹10,000/- as earnest money. The time stipulated for execution of sale-deed was fixed as 28.06.2006. The plaintiff had always been ready and willing to perform his part of the contract. On the stipulated date, plaintiff remained present in the office of Sub Registrar, Zira but defendants did not turn up. He got his presence marked by submitting an application in the said office. Despite repeated requests, defendants neither executed the sale-deed nor returned the money. Defendants having failed to perform their part of the agreement, plaintiff was compelled to file the present suit. Defendants contested the claim by filing written statement. Besides denying material averments raised by plaintiff, it was averred that agreement was forged and fabricated document. Defendant no. 1 alleged that plaintiff took the ground floor of the suit property on rent for running the business of sewing machines which was later closed. At that time he might have got her signatures on blank papers in lieu of security of said shop which were later misused. It was further pleaded that plaintiff in connivance with the marginal witnesses and scribe had prepared the forged, fabricated and ante dated agreement in question. To prove the agreement,

plaintiff himself stepped into the witness box as PW1 and examined three other witnesses. M.L. Garg, who prepared the site plan of the house in dispute appeared as PW2. PW-3 Ranjit Singh was a marginal witness to agreement to sell. The stamp vendor who sold the stamp paper on which agreement to sell was executed appeared as PW-4. Defendant no. 1 herself stepped into the witness box as DW-1 to controvert the stand taken by the plaintiff. On the basis of evidence led before the trial court, it came to the conclusion that plaintiff at the time of execution of agreement in question was fully aware that defendant no. 1 was only a co-sharer in the house in question and inspite of that he entered into agreement with defendant no. 1 for the sale of entire suit property and thereby disentitled him even to the extent of 2/3 share of defendant no. 1 in the suit property. It, however, decreed the suit for alternative relief of recovery of ₹10,000/- along with interest. Relief of possession by way of specific performance of the agreement to sell was declined. Aggrieved by the judgment and decree passed by the trial court, plaintiff-appellant preferred an appeal before the first appellate court but the same was dismissed holding that there is nothing on record to show that there was any misrepresentation or fraud played by defendant no. 1. I find no infirmity with the finding arrived at by the court below. A perusal of the issues framed shows that all the contentious issues involved in the matter are incorporated therein and had been dealt with by both the courts below. Dismissed.

C.M. No. 16568-C of 2016

As the main appeal has been dismissed on merits, no order needs to be passed in the instant application

September 12, 2018

(RAJAN GUPTA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No