

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

-.-

RSA 5527 of 2015 (O&M)
Date of decision: 05.04.2018

Sukhwinder Singh through his LRs

..... Appellant

Versus

Santokh Singh

.....Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

-.-

Present: Mr. L S Sidhu, Advocate
for the appellant

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Rekha Mittal, J. (Oral)

CM 13293 C of 2015

Prayer in this application is for condonation of delay of 262 days in re-filing the appeal.

In view of averments made in the application, arguments advanced by counsel for the applicant the application is allowed and delay of 262 days in re-filing the appeal stands condoned.

Main case

The present appeal directs challenge against concurrent findings recorded by the Courts whereby suit for specific performance of agreement to sell dated 03.05.2005 in respect of 1/4th share out of land measuring 54 kanals 16 marlas, situated at Badbar-A, Tehsil and District Barnala and permanent injunction was decreed by the trial Court to the following effect:-

“The plaintiff is entitled to the specific performance of the agreement to sell dated 03.05.2005 after paying the balance sale consideration amount to the defendant within three months from the date of passing of the order. The defendant is further restrained from alienating the property in dispute to any other person except the plaintiff and also directed to execute the sale deed in favour of the plaintiff within three months from the date of the decree after receiving the balance sale consideration failing which the plaintiff will be at liberty to get the sale deed executed through due course of law.”

The first appeal filed before the District Judge, Barnala came out to be unsuccessful as the Court in appeal affirmed findings of the trial Court without any variance.

The sole contention raised by counsel is that the property in question is situated at Barnala, the appellant is a resident of Badbar, Tehsil and District Barnala but the agreement has been prepared at Raikot where neither of the parties to the agreement reside. In addition, it is argued that both the attesting witnesses of the agreement are residents of Raikot, sufficient to substantiate plea of the appellant that the agreement to sell is the result of forgery and fabrication, therefore, the Courts have seriously erred by exercising their discretion in favour of the respondent/plaintiff by accepting his claim for specific performance of the agreement to sell propounded by the respondent/plaintiff. Another submission made by counsel is that as per agreement, sale deed was agreed to be executed more than four years after execution of the agreement despite the fact that as per plea of the respondent/plaintiff that he had already paid Rs.15,00,000.00

towards earnest money and balance amount was approximately Rs.7,00,000.00.

I have heard counsel for the appellant and perused the paper book particularly the judgments passed by the Courts.

Indisputably, the appellant contested the suit by raising a categorical plea that agreement to sell dated 03.05.2005 is a forged and fabricated one and the respondent/plaintiff has no locus standi to file the suit. He has also denied that he executed any agreement to sell dated 03.05.2005 or received Rs.15,00,000/- towards earnest money.

The respondent/plaintiff examined himself and Sarabjit Singh, one of the attesting witnesses of the agreement to sell. The appellant/defendant appeared in the witness box to counter case of the respondent/plaintiff and testimonies of the witnesses examined by him.

The trial Court in para 14 of the judgment has noticed that the appellant during his cross examination admitted his signatures at point 'A' on Ex. P1. An observation to the similar effect has been made by the Court in appeal in para 14 of the judgment. Counsel for the appellant has not disputed factual findings recorded by the Courts with regard to the appellant/defendant having admitted his signatures on the agreement to sell even though he raised plea in the written statement that agreement to sell is a forged and fabricated document. He has also fairly conceded that in the written statement, the appellant/defendant has not admitted his signatures on the agreement much less raising any averments as to the circumstances under which his signatures were obtained on the document while denying that the agreement to sell was not executed by him. As soon as the appellant/defendant has admitted his signatures on the agreement to sell, the

law imposes an obligation that he has to lead cogent and convincing evidence to prove circumstances under which his signatures were obtained on the document in question. In the case at hand, as the appellant/defendant has not raised plea in the written statement that the agreement bears his signatures, there was no occasion for him to tender any such explanation in the pleadings and thereafter to substantiate the same by leading evidence.

This apart, as the appellant has raised plea that the agreement to sell is the result of forgery and fabrication, he was under an obligation to prove such allegation amounting to criminality by leading evidence akin to proving charges in a criminal case. In the case at hand, the appellant has not adduced any evidence except his self serving statement, therefore, the appellant cannot derive any advantage of the circumstances sought to be pointed out by counsel to establish his plea that the agreement is the result of forgery and fabrication.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. The judgments and decrees passed by the Courts are affirmed. No order as to costs.

(Rekha Mittal)
Judge

05.04.2018
mohan bimbura

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